VARIAN MEDICAL SYSTEMS INC

FORM 10-K
(Annual Report)

Filed 11/23/11 for the Period Ending 09/30/11

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Industry Medical Equipment & Supplies
Sector Healthcare
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

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

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

For the fiscal year ended September 30, 2011

OR

For the transition period from ______ to ______

Commission File Number: 1-7598

VARIAN MEDICAL SYSTEMS, INC.
(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

94-2359345
(I.R.S. Employer Identification Number)

3100 Hansen Way, Palo Alto, California
(Address of principal executive offices)

94304-1030
(Zip Code)

(650) 493-4000
(Registrant’s telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Common Stock, $1 par value
(Name of each exchange on which registered)

New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant’s knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K ☒

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer,” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☒
Accelerated filer ☐
Non-accelerated filer ☐
Smaller reporting company ☐

(Do not check if a smaller reporting company)

As of April 1, 2011, the last business day of Registrant’s most recently completed second fiscal quarter, the aggregate market value of shares of Registrant’s common stock held by non-affiliates of Registrant (based upon the closing sale price of such shares on the New York Stock Exchange on April 1, 2011) was approximately $6,340,402,987. Shares of Registrant’s common stock held by the Registrant’s executive officers and directors and by each entity that owned 5% or more of Registrant’s outstanding common stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

At November 15, 2011, the number of shares of the Registrant’s common stock outstanding was 112,557,988.

DOCUMENTS INCORPORATED BY REFERENCE

Definitive Proxy Statement for the Company’s 2012 Annual Meeting of Stockholders—Part III of this Form 10-K
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FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K (this “Annual Report”), including the Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”), contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995, which provides a “safe harbor” for statements about future events, products and future financial performance that are based on the beliefs of, estimates made by and information currently available to the management of Varian Medical Systems, Inc. (“we,” “our” or the “Company”). The outcome of the events described in these forward-looking statements is subject to risks and uncertainties. Actual results and the outcome or timing of certain events may differ significantly from those projected in these forward-looking statements due to the factors listed under “Risk Factors,” and from time to time in our other filings with the Securities and Exchange Commission (“SEC”). For this purpose, statements concerning industry or market segment outlook; market acceptance of or transition to new products or technology such as fixed field intensity-modulated radiation therapy, image-guided radiation therapy, stereotactic radiosurgery, volumetric modulated arc therapy, brachytherapy, software, treatment techniques, proton therapy and advanced x-ray products; growth drivers; future orders, revenues, backlog, earnings or other financial results; and any statements using the terms “believe,” “expect,” “expectation,” “anticipate,” “can,” “should,” “would,” “could,” “estimate,” “appear,” “based on,” “may,” “intended,” “potential,” and “possible” or similar statements are forward-looking statements that involve risks and uncertainties that could cause our actual results and the outcome and timing of certain events to differ materially from those projected or management’s current expectations. By making forward-looking statements, we have not assumed any obligation to, and you should not expect us to, update or revise those statements because of new information, future events or otherwise.

PART I

Item 1. Business

General

We, Varian Medical Systems, Inc., are a Delaware corporation and were originally incorporated in 1948 as Varian Associates, Inc. In 1999, we transferred our instruments business to Varian, Inc. (“VI”), a wholly owned subsidiary, and transferred our semiconductor equipment business to Varian Semiconductor Equipment Associates, Inc. (“VSEA”), a wholly owned subsidiary. We retained the medical systems business, principally the sales and service of oncology products and the sales of x-ray tubes and imaging subsystems. On April 2, 1999, we spun off VI and VSEA, which resulted in a non-cash dividend to our stockholders and which we refer to as the “Spin-offs” in this Annual Report on Form 10-K. Immediately after the Spin-offs, we changed our name to Varian Medical Systems, Inc. We have been involved in the medical systems business since 1959. An Amended and Restated Distribution Agreement dated as of January 14, 1999 and other associated agreements govern our ongoing relationships with VI and VSEA. In May 2010, VI became a wholly owned subsidiary of Agilent Technologies, Inc. In November 2011, VSEA became a wholly owned subsidiary of Applied Materials, Inc.

Overview

We are the world leader in the design, manufacture, sale and service of equipment and software products for treating cancer with radiotherapy, stereotactic radiotherapy, stereotactic body radiotherapy (“SBRT”), stereotactic radiosurgery (“SRS”) and brachytherapy. We also design, manufacture, sell and service x-ray tubes for original equipment manufacturers (“OEMs”); replacement x-ray tubes; and flat panel digital image detectors for filmless x-ray imaging (commonly referred to as “flat panel detectors” or “digital image detectors”) in medical, dental, veterinary, scientific and industrial applications. We design, manufacture, sell and service linear accelerators, digital image detectors, image processing
software and image detection products for security and inspection purposes. We also develop, design, manufacture, sell and service proton therapy products and systems for cancer treatment.

Our mission is to explore and develop radiation technology that helps to protect and save lives and prevent harm. We seek to be a “Partner for Life” and to help save an additional 100,000 lives per year with our technology, products and services. To meet this challenge, we offer tools for fighting cancer, taking x-ray images and protecting ports and borders.

Oncology Systems designs, manufactures, sells and services hardware and software products for treating cancer. Our products include linear accelerators, brachytherapy afterloaders, treatment simulation and verification equipment and accessories; as well as information management, treatment planning and image processing software. Our products enable radiation oncology departments in hospitals and clinics to perform conventional radiotherapy treatments and offer advanced treatments such as fixed field intensity-modulated radiation therapy (“IMRT”), image-guided radiation therapy (“IGRT”), volumetric modulated arc therapy, and stereotactic radiotherapy, as well as to treat patients using brachytherapy techniques, which involve temporarily implanting radioactive sources. Our products are also used by surgeons and radiation oncologists to perform radiosurgery. Our customers worldwide include university research and community hospitals, private and governmental institutions, healthcare agencies, doctors’ offices and cancer care clinics.

Our TrueBeam™ system and our service contract business were significant contributors to growth in Oncology Systems net orders and revenues in fiscal year 2011 over fiscal year 2010. In fiscal year 2011, we acquired a privately-held supplier of devices for delivery of brachytherapy treatment and invested in a minority equity interest in Augmenix, Inc. (“Augmenix”), a privately-held company that is developing hydrogel products to decrease irradiation of radiation sensitive tissue such as the rectum through creating greater spatial separation between the sensitive tissue (e.g., rectum) and the treated area (e.g., prostate) during treatments. In October 2011, we acquired Calypso Medical Technologies, Inc. (“Calypso”), a privately-held supplier of specialized products and software for real-time tumor tracking and motion management during radiosurgery and radiotherapy.

X-ray Products designs, manufactures and sells x-ray tubes and flat panel detectors for use in a range of applications, including radiographic or fluoroscopic imaging, mammography, special procedures and industrial applications; and x-ray tubes for use in computed tomography (“CT”) scanning. Our x-ray tubes and flat panel detectors are sold to large imaging system OEM customers that incorporate them into their medical diagnostic, dental, veterinary, and industrial imaging systems. For replacement purposes, our x-ray tubes and our flat panel detectors are sold to small OEMs, independent service companies and directly to end-users.

We have two other businesses and our Ginzton Technology Center (“GTC”) that we report together under the “Other” category. Our Security and Inspection Products (“SIP”) business designs, manufactures, sells and services Linatron® x-ray accelerators, imaging processing software and image detection products (including IntellX™) for security and inspection purposes, such as cargo screening at ports and borders and nondestructive examination in a variety of applications. We generally sell SIP products to OEMs who incorporate our products into their inspection systems.

Our Varian Particle Therapy (“VPT”) business develops, designs, manufactures, sells and services products and systems for delivering proton therapy, another form of external beam radiation therapy using proton beams, for the treatment of cancer. Our current focus is commercializing our proton therapy system and bringing our expertise in traditional radiation therapy to proton therapy to improve its clinical utility and to reduce its cost of treatment per patient.

In the fourth quarter of fiscal year 2011, we booked an $88 million order from California Proton Treatment Center, LLC (“CPTC”) to provide our ProBeam™ proton therapy system for the five-room Scripps Proton Therapy Center being developed in San Diego, California. We also have a 10-year operations and maintenance agreement valued at approximately $60 million to service the ProBeam
system once the Scripps Proton Therapy Center opens, which is scheduled for 2013. In addition, we are participating with ORIX Capital Markets, LLC (“ORIX”) in a $165 million loan facility to finance the completion and startup operations of Scripps Proton Therapy Center. We are providing $115 million of the loan commitment and ORIX is providing a $50 million of the loan commitment. See Note 16, “Variable Interest Entity” of the Notes to the Consolidated Financial Statements for further discussion.

The GTC develops technologies that enhance our current businesses or may lead to new business areas, including technology to improve radiation therapy and x-ray imaging, as well as other technology for a variety of applications, including security and cargo screening. The GTC is also actively engaged in searching for chemical or biological agents that work synergistically with radiation to improve treatment outcomes.

Our business is subject to various risks and uncertainties. You should carefully consider the factors described in “Risk Factors” in conjunction with the description of our business set forth below and the other information included in this Annual Report on Form 10-K.

Radiation Therapy and the Cancer-Care Market

Radiotherapy is the use of certain types of focused energy to kill cancer cells and shrink tumors, with the goal of damaging as many cancer cells as possible, while limiting harm to nearby healthy tissue. Radiotherapy is commonly used either alone or in combination with surgery or chemotherapy. One important advantage is that radiation has its greatest effect on replicating cells. When radiation interacts with a cell the therapeutic effect is primarily mediated by damaging cellular genetic material (chromosomes), which interrupts cell replication and results in eventual cellular death. Since the need for replication is particularly critical to the survival of a cancer and since normal tissues are better able to repair such damage, radiation tends to disproportionately kill cancer cells. The clinical goal in radiation oncology is to deliver as high of a radiation dose as possible directly to the tumor to kill the cancerous cells while minimizing radiation exposure to healthy tissue surrounding the tumor so that complications, side effects and secondary effects can be limited. That has been the driving force in the clinical care advancements in radiation oncology over the past two decades, from conventional radiotherapy to advanced forms of treatment such as IMRT, IGRT, SRS, SBRT and proton therapy, and it has certainly been one of the driving forces in our own product development plans.

The process for delivering radiotherapy typically consists of examining the patient, planning the treatment, simulating and verifying the treatment plan, providing quality assurance for the equipment and software, delivering the treatment, verifying that the treatment was delivered correctly and recording the history and results of the treatment. The team responsible for delivering the radiotherapy treatment generally comprises a physician specializing in radiation oncology, a physicist for planning the treatment and a radiation therapist for operating the machines.

The most common form of radiotherapy involves delivering x-ray beams from outside of the patient’s body, a process sometimes referred to as external beam radiotherapy. A device called a linear accelerator generates the x-ray beams and administers the treatment by rotating around a patient lying on a treatment couch and delivering the x-ray beam to the tumor from different angles in order to concentrate radiation at the tumor while at the same time minimizing the dose delivered to the surrounding healthy tissue. Conventional radiotherapy typically involves multiple, or fractionated, treatments of a tumor in up to 50 radiation sessions. The linear accelerator may also deliver electron beams for the treatment of diseases closer to the body surface.

IMRT is an advanced form of external beam radiotherapy in which the shape, intensity and angle of the radiation beams from a linear accelerator are varied, or modulated, across the target area. This form of radiotherapy conforms the radiation beams more closely to the shape of the tumor and allows physicians to deliver higher doses of radiation than conventional radiation, while more effectively limiting the amount of radiation delivered to nearby healthy tissue. In this way, clinicians can design and administer
an individualized treatment plan for each patient, targeting the tumor as closely as a few millimeters. IMRT can be used to treat head and neck, breast, prostate, pancreatic, lung, liver, gynecological and central nervous system cancers. IMRT has become a well-accepted standard of treatment for cancer; and additional treatment centers, from university hospitals to local community clinics, adopt IMRT for their treatments every year. We are a leading global provider of products that enable IMRT for the treatment of cancer.

IGRT is another advanced form of external beam radiotherapy complementing IMRT to enhance treatments. While IMRT helps physicians shape the beam to the tumor, IGRT goes further in allowing physicians to accommodate for a tumor moving or shrinking. This allows the delivery of even higher doses of radiation to tumors with the goal of sparing even more of the surrounding healthy tissue. IGRT technologies compensate for daily changes and movements in tumors and enable dynamic, real-time visualization and precise treatment of small, moving and changing tumors with greater intensity and accuracy. With the greater precision offered by IGRT, clinics and hospitals are potentially able to improve outcomes by concentrating even still higher doses of radiation at the tumors. We believe IGRT has become an accepted standard for treatment in the radiation oncology market.

SRS and SBRT, often collectively referred to as radiosurgery, are advanced ablative radiation treatment procedures performed in a small number of treatment sessions with high doses of ionizing radiation. Radiosurgery is typically delivered with many small beams of radiation from many positions about the body, incorporating precise stereotactic image-guidance, which maximizes dose to the target and minimizes dose to surrounding normal tissues. Radiation oncologists, surgeons and other oncology specialists are increasingly recognizing radiosurgery as a useful tool to eradicate cancerous and non-cancerous lesions anywhere in the body.

Volumetric modulated arc therapy is a significant further advancement in IMRT that allows physicians to control three parameters simultaneously: (i) the rate at which the linear accelerator gantry rotates around the patient, (ii) the beam-shaping aperture and (iii) the rate at which the radiation dose is delivered to the patient. This creates a finely-shaped IMRT dose distribution that more closely matches the size and shape of the tumor. Volumetric modulated arc therapy enables faster treatments and greater precision. Our RapidArc™ radiotherapy products plan and deliver volumetric modulated arc therapy treatments.

Physicians, hospitals and clinics place additional value on radiotherapy equipment and treatments, such as volumetric modulated arc therapy, that enable shorter treatment times and greater patient throughput. From the patient’s standpoint, shorter treatment times means that the patient is immobilized on the treatment couch for a shorter time period. Shorter treatment sessions decrease waiting times and, since treatments are delivered in fractions over the course of many days, can mean fewer disruptions to a patient’s daily routine. From the physicians’ and hospitals’ standpoint, shorter treatment times can lessen the chance of tumors moving during treatment and can increase patient throughput. Shorter treatment times and increased patient throughput can increase the number of treatments per day (which is a particular concern in countries with lower numbers of treatment machines per capita), and, as a result, can decrease the cost per treatment which in turn can mean greater access to advanced care to more patients.

An alternative to external beam radiotherapy, brachytherapy involves the insertion of radioactive seeds, wires or ribbons directly into a tumor or into a body cavity close to the cancerous area. These techniques, unlike external beam radiation therapy, tend to result in much less irradiation of the surrounding healthy tissue so that physicians can prescribe a higher total dose of radiation typically over a shorter period of time. Brachytherapy is often used for cancers of the head and neck, breast, uterus, cervix, soft tissue and prostate.

Proton therapy is another form of external beam radiotherapy that uses proton particles in the form of a beam generated with a cyclotron rather than x-ray beams from a linear accelerator. A proton beam’s
signature energy distribution curve, also known as the “Bragg peak,” allows for greater accuracy in targeting tumor cells with an even lower dose to nearby healthy tissue than may be delivered with x-ray beams from a linear accelerator. This makes proton therapy a preferred option for treating certain cancers, particularly tumors near critical structures such as the optic nerve and cancers in children. Pencil-beam scanning capability allows for greater sparing of healthy tissue compared to external beam radiotherapy treatments. Although proton therapy has been in clinical use for more than four decades, it has not been widely deployed due to the high capital cost and the market is still developing. We have entered the proton therapy market because we believe we can apply our experience in traditional radiotherapy to proton therapy, reducing the cost of treatment per patient for existing clinical applications and expanding the use of proton therapy into a broader array of cancer types. We believe that proton therapy will over time become a more widely accepted method of treatment.

The radiation oncology market is growing globally due to a number of factors. The number of new cancer cases diagnosed annually is projected to increase by more than 65 percent from 12.7 million new cases in 2008 to more than 21.3 million in 2030, according to the International Agency for Research on Cancer (the “IARC”) in the World Health Organization. The IARC’s World Cancer Report predicts that the increase in new cases will mainly be due to steadily aging populations in both developed and developing countries. Technological advancements have helped to improve the precision and applicability of radiotherapy and radiosurgery, potentially expanding the use of radiotherapy and radiosurgery equipment to treat a broader range of cases. Technological advances in hardware and software are also creating a market for replacing an aging installed base of machines that are unable to match new, higher standards of care.

The rise in cancer cases, together with the increase in sophistication of new treatment processes, have created demand for more automated products that can be integrated into clinically practical systems to make treatments more rapid and cost effective. Technology advances leading to improvements in patient care, the availability of more advanced, automated and efficient clinical tools in radiotherapy, the advent of more precise forms of radiotherapy treatment (such as IMRT, IGRT, volumetric modulated arc therapy, stereotactic radiotherapy, SRS, SBRT, brachytherapy and proton therapy), and developing technology and equipment that enable treatments (such as volumetric modulated arc therapy) that reduce treatment times and increase patient throughput should drive the demand for our radiation therapy products and services.

International markets in particular are under-equipped to address the growing cancer incidence. Patients in many foreign countries must frequently endure long waits for radiotherapy. Several nations with growing economies, including China, India, and Brazil, are beginning to invest in expanding their radiation oncology capability to address the needs of their growing and aging populations. As an example, China, India and Brazil are estimated to have less than one linear accelerator per million people in their population. By comparison, the United States has an estimated 13 linear accelerators per million people in its population. This capacity shortfall, coupled with ever increasing incidences of cancer, represent additional drivers for our continued growth in international markets.

As a U.S.-based company, the competitiveness of our product pricing is influenced by the fluctuation of the U.S. dollar against other currencies. A weaker U.S. dollar against foreign currencies would make our product pricing more competitive in the local currencies of our international customers. A weaker U.S dollar against foreign currencies would also benefit our international revenues and net orders when measured in U.S. dollars. Since fiscal year 2009, all of our businesses have been operating in a very tough environment marked by the credit crisis and economic downturn in the United States and the sovereign debt crisis in Europe, both regions being significant markets for our businesses. In Oncology Systems, the economic downturn shrunk customer capital equipment budgets, slowed decision making and made financing more expensive and time consuming. Our X-ray Products business saw weak net orders and revenues as a result of customer inventory reduction efforts. We saw governments postpone purchasing decisions and delay deployments of products for security and inspection systems. We have seen the very
tight credit markets constrain the ability of proton projects to get financing. While we believe we have been successfully navigating within this tough environment and economic activity has shown some improvement in the United States, recovery has been sluggish and we cannot predict the strength or sustainability of an economic recovery, in general or specifically in the healthcare industry. In addition, issues related to sovereign debt in Europe have significantly disturbed the global financial markets. Certain European governments have taken or are planning to take austerity measures in order to meet their debt obligations and to avoid intensifying the sovereign debt crisis. The ongoing concerns about the U.S. and Euro zone economies and the sovereign debt crisis in Europe have weakened and may continued to weaken global demand, thus slowing down economic activities in faster growing export-centric countries, such as China. The worldwide economic instability may continue to affect our business and demand for our products in fiscal year 2012.

**Products**

**Oncology Systems**

Our Oncology Systems business segment is the leading provider of advanced hardware and software products for treatment of cancer with conventional radiation therapy, IMRT, IGRT, volumetric modulated arc therapy, stereotactic radiotherapy, SRS, SBRT and brachytherapy. Oncology Systems products address each major aspect of the radiotherapy process, including linear accelerators and accessory products for positioning the patient and delivering the x-ray beam; brachytherapy afterloaders for delivering the radioactive implantable seeds; treatment planning software for planning treatment sessions and dose delivery; treatment simulation and verification equipment and accessories and quality assurance software for simulating and verifying the treatment plans before treatment and verifying that a treatment was delivered correctly afterwards; and information management software for recording the history and results of treatments and other patient treatment information and data, including patient x-ray images.

The focus of our Oncology Systems business is addressing the key concerns of the market for advanced cancer care systems; improving efficiency, precision, cost-effectiveness and ease of delivery of these treatments; and providing greater access to advanced treatments. A core element of our business strategy is to provide our customers with highly versatile, clinically proven products that are interoperable and can be configured and integrated into automated systems that combine greater precision, shorter treatment times and greater cost effectiveness and that improve the entire process of treating a patient. Our products and accessories for IMRT and IGRT allow clinicians to track and treat tumors using very precisely shaped beams, targeting the tumor as closely as currently possible and allowing the delivery of higher doses to the tumor while limiting exposure of nearby healthy tissue. Additionally, the precision and versatility of our products and technology makes it possible to use radiotherapy to treat metastatic cancers. With our treatment planning, verification and information management software products, a patient’s treatment plans, treatment data and images are recorded and stored in a single database shared by each of our products, which enables better communication among products. Our products also allow multiple medical specialties—radiation oncology, neurosurgery, radiographic imaging and medical oncology—to share equipment, resources and information in a more cost-effective manner. Furthermore, the ability of our products and technology to interoperate with each other and to interconnect into automated systems allows physicians to schedule and treat more patients within a set time period, which adds to the cost-effectiveness of our equipment.

Linear accelerators are the core device for delivering conventional external beam radiotherapy IMRT, IGRT and volumetric modulated arc therapy treatments, and we produce versions of these devices to suit various requirements. Our Clinac® medical linear accelerators are used to treat cancer by producing therapeutic electrons and x-ray beams that target tumors and other abnormalities. The Clinac iX linear accelerators are designed for more streamlined and advanced treatment processes including IMRT and IGRT. We also produce the Trilogy™ linear accelerator, designed to be a versatile, cost-effective, ultra-
precise device with a faster dose delivery rate and smaller isocenter compared to the Clinac iX. Trilogy was developed with IGRT and stereotactic radiotherapy in mind, but is also capable of delivering conventional, 3D conformal radiotherapy, IMRT and volumetric modulated arc therapy. Trilogy has the precision necessary to deliver radiosurgery for neurological treatments and is the accelerator that is at the core of the Novalis Tx™ product offering, a combination of products from Varian and Brainlab AG (“Brainlab”), targeted to neurosurgeons. The UNIQUE™ low-energy linear accelerator, which was developed to address more price sensitive markets in international regions, is capable of integrating our accessory products (including RapidArc) to deliver IMRT, IGRT and volumetric modulated arc therapy. In the second quarter of fiscal year 2010, we introduced the TrueBeam system for image-guided radiotherapy and radiosurgery. TrueBeam is a fully-integrated system designed from the ground up to treat a moving target with higher speed and accuracy and complements, at the high end, our accelerator product line portfolio. In April 2011, we received approval by the State Food & Drug Administration in China to market and sell our TrueBeam system in China. In the third quarter of fiscal year 2011, we received Shonin approval from the Japanese Ministry of Health, Labor and Welfare to market the TrueBeam system in Japan. Through September 30, 2011, we had received orders for 380 TrueBeam systems since its introduction, a majority of which came from North America. A minority of these orders represented upgrades from other linear accelerators already in our backlog. The TrueBeam system was a key contributor to Oncology Systems net order and revenue growth in fiscal year 2011 over fiscal year 2010.

We also manufacture and market linear accelerator accessories that enhance efficiency and enable delivery of advanced treatments such as IMRT, IGRT, stereotactic radiotherapy, SRS, SBRT and volumetric modulated arc therapy. Our Millennium™ series of multi-leaf collimators and High Definition 120 (“HD 120”) multi-leaf collimators are used with a linear accelerator to define the size, shape and intensity of the generated beams. PortalVision™, our electronic portal-imager, is used to verify a patient’s position while on the treatment couch, which is critical for accurate treatments and simplifies quality assurance of individual treatment plans. We also offer an innovative real-time patient position monitoring product, the RPM™ respiratory gating system, which allows the linear accelerator to be synchronized with patient breathing to help compensate for tumor motion during treatment.

Our IGRT accessories include the On-Board Imager (“OBI”) hardware accessory affixed to the linear accelerator that allows dynamic, real-time imaging of tumors while the patient is on the treatment couch and a cone-beam computerized tomography (“CBCT”) imaging software accessory that works with the OBI to allow patient positioning based on soft-tissue anatomy. Using sophisticated image analysis tools, the CBCT scan can be compared with a reference CT scan taken previously to determine how the treatment couch should be adjusted to fine-tune and verify the patient’s treatment setup and positioning prior to delivery of the radiation. Therefore, to deliver the most advanced forms of IGRT, our accelerators would typically have an OBI, CBCT, PortalVision and other IGRT-related hardware and software as accessories.

Our RapidArc radiotherapy products enable the planning and delivery of image-guided IMRT in a single continuous rotation of up to 360 degrees rather than as a series of fixed fields. Our RapidArc products enable faster delivery of radiation treatment with the possibility of reduced opportunity for tumor movement during treatment and greater patient throughput and lower cost per patient for the hospital or clinic. RapidArc radiotherapy products are a proprietary implementation of volumetric modulated arc therapy that coordinates beam shaping, dose rate and gantry speed to deliver a highly conformal dose distribution to the target tumor. We believe RapidArc represents a significant advancement in IMRT cancer treatment.

In October 2011, we acquired Calypso, a privately-held supplier of specialized products and software for real-time tumor tracking and motion management during radiosurgery and radiotherapy, for $10 million plus potential contingent consideration upon achievement of certain milestones. This acquisition enables us to offer real-time, non-ionizing tumor tracking tools for enhancing the precision of cancer treatments.
Our treatment planning and information management software products enhance and enable the delivery of advanced radiotherapy treatments, from the initial treatment planning and plan quality assurance verification to the post-treatment recording of data and storing of patient information. Prior to any treatment, physicians must plan the course of radiation delivery for the patient. We offer a range of treatment planning products that assist physicians in compiling this plan. Our Eclipse™ treatment planning system provides physicians with 3D image viewing, treatment simulation, radiation dosage calculation and verification and other tools for generating treatment delivery plans for the patient. The Eclipse software utilizes a sophisticated technique known as inverse planning to enable physicians to rapidly develop optimal treatment plans based on a desired radiation dose outcome to the tumor and surrounding tissue.

Our Argus™ software manages the planning, recording and analysis of quality assurance data for linear accelerators. Finally, our ARIA™ Oncology Information Management System (“ARIA”) is a comprehensive real-time information management system and database that records and verifies radiotherapy treatments carried out on the linear accelerator, records and stores patient data relating to chemotherapy treatment which may be prescribed by a physician in addition to radiotherapy, performs patient charting and manages patient information and patient image data. This gives clinics and hospitals the ability to manage treatment and patient information across radiation oncology and medical oncology procedures. Also, because ARIA is an electronic medical record, it can enable users to operate filmless and paperless oncology departments and cancer clinics.

Our treatment simulators enable physicians to simulate radiation therapy treatments prior to delivery. We manufacture and sell Acuity™, a simulator that uses advanced amorphous silicon imaging technology and which has been designed to enhance IMRT treatments by integrating simulation more closely with treatment planning and by helping physicians better address tumor motion caused by breathing.

In addition to offering our own suite of equipment and software products for planning and delivering radiotherapy treatments, we have partnered with selected leaders in certain segments of the radiation therapy and radiosurgery market. With General Electric Medical Systems (“GE”) in North America, we have established the See and Treat Cancer Care™ program for radiation therapy that allows us to offer a suite of diagnostic and cancer treatment tools combining our comprehensive set of radiation therapy products with GE’s advanced diagnostic imaging systems. We have also established a strategic relationship with Brainlab to market and sell to neurosurgeons a radiosurgical suite of Brainlab products with our Trilogy Tx linear accelerator or our TrueBeam™ STx. We have a 2.5% equity ownership in Brainlab.

We also hold a minority equity interest in and an exclusive option to purchase the remaining equity interest of Augmenix.

Our brachytherapy operations design, manufacture, sell and service advanced brachytherapy products, including VariSource™ HDR afterloaders and GammaMed™ HDR/PDR afterloaders. BrachyVision™ brachytherapy treatment planning system, applicators and accessories. Brachytherapy also develops and markets the VariSeed™ LDR prostate treatment planning system and the Vitesse™ software for HDR prostate treatment planning. In March 2011, we acquired a privately-held supplier of devices for delivery of brachytherapy treatment of cancer for approximately $8 million. This acquisition enabled Oncology Systems to expand its product offerings for brachytherapy treatment of cancer.

Revenues from our Oncology Systems business segment represented 78%, 79% and 81% of total revenues for fiscal years 2011, 2010 and 2009, respectively. Our Oncology Systems business segment revenues also include service revenues. See “—Customer Services and Support.” For a discussion of Oncology Systems business segment financial information, see Note 17, “Segment Information” of the Notes to the Consolidated Financial Statements.
**X-ray Products**

Our X-ray Products business segment is a world leader in designing and manufacturing x-ray tubes and flat panel detectors, which are key components of x-ray imaging systems. We sell our products to OEMs for both new system configurations and as replacement components for installed systems. We conduct an active research and development program to focus on new technology and applications in both the medical and industrial x-ray imaging markets.

We manufacture x-ray tubes for four primary medical diagnostic radiology applications: CT scanners, radiographic or fluoroscopic imaging, special procedures and mammography. We also offer a large line of industrial x-ray tubes, which consist of analytical x-ray tubes used for x-ray fluorescence and diffraction, as well as tubes used for non-destructive imaging and gauging and airport baggage inspection systems.

Our flat panel detectors, which are based on amorphous silicon imaging technologies, have found broad application as an alternative to image intensifier tubes and x-ray film. These flat panel detectors are being incorporated into next generation filmless medical diagnostic, dental, veterinary and industrial inspection imaging systems and also serve as a key component of our OBI, which helps enable IGRT. We believe that imaging equipment based on amorphous silicon technologies is more stable and reliable, needs fewer adjustments and suffers less degradation over time than image intensifier tubes and is more cost effective than x-ray film. Our product offering of flat panel detectors also includes a family of radiographic panels, which may be used on digital radiography systems or may be used to convert film-based systems to digital systems.

Revenues from X-ray Products represented 18%, 17% and 15% of total revenues in fiscal years 2011, 2010 and 2009. For a discussion of the X-ray Products business segment financial information, see Note 17, “Segment Information” of the Notes to the Consolidated Financial Statements.

**Other**

Our SIP business designs, manufactures, sells and services Linatron x-ray accelerators, imaging processing software and image detection products for security and inspection purposes, such as cargo screening at ports and borders and nondestructive examination in a variety of applications. The Linatron M-i is a dual energy accelerator that can perform non-intrusive inspection of cargo containers and aid in automatically detecting and alerting operators when high-density nuclear materials associated with dirty bombs or weapons of mass destruction are present during cargo screening. The Linatron K-15 is a high-energy accelerator for inspection of very large, dense objects, including, for example, manufactured segments used in the Ariane rocket program in Europe. IntellX is an imaging product for cargo screening.

Generally, we sell our SIP products to OEMs who incorporate our products into their inspection systems, which are then sold to customs and other government agencies who use them in overseas ports and borders to screen for contraband, weapons, stowaways, narcotics and explosives, as well as for manifest verification. We also sell our SIP products to commercial organizations in the casting, power, aerospace, chemical, petrochemical and automotive industries for nondestructive product examination purposes, such as industrial inspection and manufacturing quality control.

Our VPT business develops, designs, manufactures, sells and services products and systems for delivering proton therapy, another form of external beam radiotherapy using proton beams, for the treatment of cancer. Our ProBeam™ system is capable of delivering precise intensity modulated proton therapy (“IMPT”) using pencil beam scanning technology. Proton therapy is a preferred option for treating certain cancers, particularly tumors near critical structures such as the optic nerve and cancers in children. Although proton therapy has been in clinical use for more than four decades, it has not been widely deployed due to high capital cost.
Proton therapy facilities are large-scale construction projects that are time consuming; involve significant customer investment and often complex project financing. Consequently, this business is vulnerable to general economic and market conditions. Customer decision-making cycles tend to be very long, and orders generally involve many contingencies. As with our SIP business, bid awards in this business may be subject to challenge by third parties. We are investing substantial resources to build this new business. We currently have one proton therapy system in operation at a customer facility in Munich, Germany and, as of the end of fiscal year 2011, four treatment gantries at the facility were treating patients. This equipment was partially installed, and not yet commissioned, at the time of the acquisition of ACCEL Instruments GmbH ("ACCEL," which has since changed its name to Varian Medical Systems Particle Therapy GmbH). We have Conformité Européenne ("CE") mark to market our proton therapy systems within the European Economic Area ("EEA") and, as of January 2011, we received 510(k) clearance in the United States for our proton therapy system.

GTC, our scientific research facility, continues to invest in developing technologies that enhance our current businesses or may lead to new business areas, including next generation digital x-ray imaging technology, volumetric and functional imaging, and improved x-ray sources and technology for security and cargo screening applications. In addition, GTC is developing technologies and products that are designed to improve disease management by more precise targeting of radiation, as well as by employing targeted energy and molecular agents to enhance the effectiveness and broaden the application of radiation therapy.

SIP, VPT and GTC report their results from operations as part of the “Other” category. Combined revenues from these operations represented 4% of total revenues in each of fiscal years 2011, 2010 and 2009. For a discussion of segment financial information, see Note 17, “Segment Information” of the Notes to the Consolidated Financial Statements.

Customer Services and Support
We maintain service centers in Milpitas, California; Las Vegas, Nevada; Marietta, Georgia; Buc, France; Crawley, United Kingdom; Zug, Switzerland; Herlev (Copenhagen), Denmark; Diegem (Brussels), Belgium; Darmstadt, Germany; Houten, The Netherlands; Alcobendas (Madrid), Spain; Cernusco (Milan), Italy; Manama, Bahrain; Moscow, Russia; Mumbai, Delhi, and Chennai, India; Tokyo, Osaka, Sendai, Nagoya, and Fukuoka, Japan; Beijing, Chengdu, Shanghai and Hong Kong, China; Kuala Lumpur, Malaysia; Singapore; Bangkok, Thailand; Belrose, Australia; and Sao Paulo, Brazil; as well as field service personnel throughout the world for Oncology Systems customer support services. Key Oncology Systems education operations are located in Las Vegas, Nevada, Beijing, China, Mumbai, India, and Zug, Switzerland. Our network of service engineers and customer support specialists provide installation, warranty, repair, training and support services, and professional services. We also have a distributed service parts network of regional hubs and forward-stocking locations across all major geographies. We generate service revenues by providing services to customers on a time-and-materials basis and through post-warranty equipment service contracts and software support contracts. Most of the field service engineers are our employees, but our products are serviced by employees of dealers and/or agents in a few foreign countries. Customers can access our extensive service network by calling any of our service centers.

We warrant most of our Oncology Systems products for parts and labor for 12 months, and we offer a variety of post-warranty equipment service contracts and software support contracts to suit customers’ requirements.

We believe customer service and support are an integral part of our Oncology Systems competitive strategy. Growth in our service revenues has resulted from the increasing customer adoption of service contracts as the sophistication and installed base of our products increase. We also believe superior service plays an important role in marketing and selling medical products and systems, particularly as the
products become more complex. Nevertheless, some of our customers use their own internal service organizations and/or independent service organizations to service equipment after the warranty period expires and therefore do not enter into agreements with us for extended service.

We generally warrant our x-ray tubes and flat panel detector products in our X-ray Products business segment for 12 to 24 months, although for some x-ray tubes the warranty period is based on the number of times the product is used. We provide technical advice and consultation for x-ray tubes and imaging subsystems products to major OEM customers from our offices in Salt Lake City, Utah; Charleston, South Carolina; Tokyo, Japan; Beijing, China and Willich, Germany. Our applications specialists and engineers make recommendations to meet the customer’s technical requirements within the customer’s budgetary constraints. We often develop specifications for a unique product, which will be designed and manufactured to meet a specific customer’s requirements. We also maintain a technical customer support group in Charleston, South Carolina to meet the technical support requirements of independent service companies that use our x-ray tube and flat panel detector products.

We generally warrant our SIP products for 12 months. We provide technical support and service for these products to major OEM customers from our offices in Las Vegas, Nevada; Lincolnshire, Illinois; and Buc, France; Manama, Kingdom of Bahrain; Crawley, United Kingdom; Milano, Italy; and Brussels, Belgium. We use the Oncology Systems Customer Support Services organization in Asia, Australia and South America.

In the VPT business, we sell our proton therapy equipment generally with a 12-month warranty. We also generate service revenues by providing on-site proton therapy system technical operation and maintenance support services for relatively long-term periods (i.e., a 5-year term or longer). We believe customer service and support are an integral part of our VPT competitive strategy.

Marketing and Sales

We employ a combination of direct sales forces and independent distributors or resellers in North America, Europe, Australia and major parts of Asia and Latin America for the marketing and sales of our products worldwide. In fiscal years 2011, 2010 and 2009, we did not have a single customer that represented 10% or more of our total revenues.

For our Oncology Systems segment, we sell direct in North America and use a combination of direct sales and independent distributors in international regions. We also have direct-to-consumer advertising campaigns to increase consumer awareness of Oncology Systems’ products. We sell our Oncology Systems products primarily to university research and community hospitals, private and governmental institutions, healthcare agencies, physicians’ offices and cancer care clinics worldwide. These hospitals, institutes, agencies, physicians’ offices and clinics replace equipment and upgrade treatment capability as technology evolves. Sales cycles for our external beam radiotherapy products typically can be quite lengthy since many of them are considered capital equipment and are affected by budgeting cycles. Our customers frequently fix capital budgets one or more years in advance. In recent years, we have seen the purchasing cycle lengthen as a result of the more complex decision-making process associated with larger dollar value transactions for more sophisticated IGRT and surgical equipment, and other technical advances.

During the recent economic downturn, we saw customers’ decision-making process further complicated and lengthened, especially in the United States, which caused hospitals, clinics and research institutions to more closely scrutinize and prioritize their capital spending in light of tightened capital budgets, tougher credit requirements and the general constriction in credit availability. In addition, the recent economic downturn had caused customers to delay requested delivery dates. Because our product revenues are influenced by the timing of product shipments, which are tied to customer-requested delivery dates, these delivery delays had increased the average order to revenue conversion cycle in the United States. Historically, this conversion cycle has been longer when new products are introduced or
when we sell more products internationally. The lengthening of order to revenue conversion cycle could reduce our revenues and margins. In addition, our receivables may take longer to collect. Continuing growth in demand for our Oncology Systems products depends in part on the strength and sustainability of an economic recovery in the United States and in the Euro zone. Even though economic activity has shown some improvement, recovery has been sluggish and we cannot predict the strength or sustainability of an economic recovery, in general or specifically in the healthcare industry.

Reimbursement rates in the United States have generally supported a favorable return on investment for the purchase of new radiotherapy equipment. While we believe that improved product functionality, greater cost-effectiveness and prospects for better clinical outcomes with new capabilities such as IMRT, IGRT and volumetric modulated arc therapy tend to drive demand for radiotherapy products, large changes in reimbursement rates or reimbursement structure can affect customer demand and cause market shifts. We have seen our customers’ decision-making process complicated by the uncertainty surrounding Medicare reimbursement rates for radiotherapy and radiosurgery in the United States, such as in 2009 when there were proposed reductions in Medicare reimbursement rates for radiotherapy and radiosurgery at free-standing clinics. In addition, we do not know what impact the Affordable Health Care for America Act and similar state proposals will have on long-term growth or demand for our products and services in our Oncology Systems business. International reimbursement rates for radiation therapy tend to be low in national health systems, yet international markets continue to invest in better treatment capability, albeit often after it has been proven in the North American region or in other leading research centers worldwide.

Total Oncology Systems revenues, including service revenues, were $2.0 billion, $1.9 billion and $1.8 billion for fiscal years 2011, 2010 and 2009, respectively. We divide our market segments for Oncology Systems revenues into North America, Europe, Asia and rest of the world, and these regions constituted 48%, 32%, 15% and 5%, respectively, of Oncology Systems revenues during fiscal year 2011; 46%, 33%, 17% and 4%, respectively, of Oncology Systems revenues during fiscal year 2010; and 54%, 29%, 14%, and 3%, respectively, of Oncology Systems revenues during fiscal year 2009.

Our X-ray Products segment employs a combination of direct sales and independent distributors for sales in all of its regions and sells a high proportion of our x-ray tube products and flat panel products to a limited number of OEMs that incorporate our products into their imaging systems. The long-term fundamental growth driver of this business segment is the on-going success of our key OEM customers, and we expect that revenues from relatively few customers will continue to account for a high percentage of X-ray Products revenues in the foreseeable future. Our OEM customers include Toshiba Corporation, Carestream Health, Inc., Hitachi Medical Corporation, GE Healthcare, Planmeca Oy, Imaging Sciences International, Inc., Agfa Healthcare NV, and Sound Technologies, Inc. These OEM customers represented 64%, 62% and 61% of our total X-ray Products segment revenues during fiscal years 2011, 2010 and 2009, respectively, with the remaining revenues coming from a large number of small OEMs and independent services companies. Changes in access to diagnostic radiology or the reimbursement rates associated with diagnostic radiology as a result of the Affordable Health Care for America Act and similar state proposals will likely affect demand for our products in our X-ray Products business.

Total revenues for our X-ray Products segment were $469 million, $403 million and $331 million for fiscal years 2011, 2010 and 2009, respectively. We divide our market segments for X-ray Products revenues by region into North America, Europe, Asia and rest of the world, and these regions constituted 29%, 21%, 49% and 1%, respectively, of X-ray Products revenues during fiscal year 2011; 32%, 17%, 50% and 1%, respectively, of X-ray Products revenues during fiscal year 2010; and 33%, 15%, 49% and 3%, respectively, of X-ray Products revenues during fiscal year 2009.

Our SIP business also uses a combination of direct sales and independent distributors and sells a high proportion of its products to a limited number of OEMs that incorporate our products into their systems. As with X-ray Products, this business depends on the success of our OEM customers, and we expect that revenues from relatively few customers will continue to account for a high percentage of SIP

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revenues in the foreseeable future. We supply Linatron linear accelerators and detector products to OEMs such as Smiths Detection, Rapiscan Systems, Inc. and American Science & Engineering, Inc. We also sell our SIP products to commercial organizations in the casting, power, aerospace, chemical, petro-chemical and automotive industries.

Use of our SIP technology in security cargo screening and border protection is still in its early stages, but we believe demand for our SIP products will be driven primarily by cargo screening and border protection needs. This business is heavily influenced by governmental policies on homeland security, political change and government budgets. Orders and revenues for our SIP products have been and may continue to be unpredictable as governmental agencies may place large orders with us or with our OEM customers over a short period of time and then may not place any orders for a long time period thereafter. Furthermore, bid awards in this business may be subject to challenge by third parties, as we have previously encountered with a large government project, which can make the certainty of some SIP orders unpredictable.

In the VPT business, we use direct sales specialist representatives who collaborate globally with our Oncology Systems sales group on projects. Potential customers are government-sponsored hospitals and research institutions and research universities, which typically purchase products through public tenders, and, to a lesser extent, private hospitals, clinics and private developers. While this market is still developing, we believe that growth in this business will initially develop in the major metropolitan areas in the United States and abroad, driven by institutions that wish to expand their clinical offerings and increase their profile in their respective communities.

Competition

Rapidly evolving technology, intense competition and pricing pressure characterize the markets for radiation therapy equipment and software products, including our Oncology Systems products. We compete with companies worldwide. Some of our competitors have greater financial, marketing and other resources than we have. These competitors could develop technologies and products that are more effective than those we currently use or produce or that could render our products obsolete or noncompetitive. Our smaller competitors could be acquired by companies with greater financial strength, which could enable them to compete more aggressively. Some of our suppliers or distributors could also be acquired by competitors, which could disrupt these supply or distribution arrangements and result in less predictable and reduced revenues. Furthermore, we believe that new competitors will enter our markets, as we have encountered new competitors as we enter new markets such as radiosurgery, volumetric modulated arc therapy and proton therapy. We have directed substantial product development efforts into (i) greater interconnectivity of our products for more seamless operation within a system, (ii) enhancing the ease of use of our software products and (iii) reducing setup and treatment times and increasing patient throughput. We have emphasized maintaining an “open systems” approach that allows customers to “mix and match” our various individual products, incorporate products from other manufacturers, share information with other systems or products and use the equipment for offering various methods of radiation therapy treatment. We have done this based on our belief that such interconnectivity will increase the acceptance and adoption of IMRT, IGRT and volumetric modulated arc therapy and will stimulate demand for our products. We face competition though from “closed-ended” dedicated-use systems that place simplicity of use ahead of flexibility. If we have misjudged the importance to our customers of maintaining an “open systems” approach, or if we are unsuccessful in our efforts to enable greater interconnectivity, enhance ease-of-use and reduce setup and treatment times, our revenues could suffer.

Our Oncology Systems customers’ equipment purchase considerations typically include: reliability, servicing, patient throughput, precision, price, payment terms, connectivity, clinical features, the ability to track patient referral, long-term relationship with customers and capabilities of customers’ existing equipment. We believe we compete favorably with our competitors based upon our strategy of providing
To compete successfully, we must provide technically superior, clinically proven products that deliver more precise, cost effective, high quality clinical outcomes, together in a complete package of products and services, and to do so ahead of our competitors. Since our Oncology Systems products are generally sold on a basis of total value to the customer, our business may suffer when purchase decisions are based solely upon price, which can happen if hospitals and clinics give purchasing decision authority to group purchasing organizations. In addition, additional competitors may delay customer purchasing decisions as customers evaluate the products of these competitors along with ours, potentially extending our sales cycle and adversely affecting our net orders.

We are the leading provider of medical linear accelerators and related accessories. In radiotherapy and radiosurgery markets, we compete primarily with Elekta AB, Siemens Medical Solutions, Accuray Incorporated and Tomotherapy Incorporated (which was recently acquired by Accuray Incorporated). With our information and image management, simulation, treatment planning and radiosurgery products, we also compete with a variety of companies, such as Elekta AB, Philips Medical Systems, Best Theratronics, Ltd., Nucletron B.V. and Siemens Medical Solutions. We also encounter some competition from providers of hospital information systems. With respect to our brachytherapy operations, our competitors are Nucletron B.V. (which was recently acquired by Elekta AB) and IBt Bebig s.a. In our Oncology Systems the service and maintenance business, we compete with independent service organizations and our customers’ internal service organizations.

In addition, as a radiotherapy and radiosurgery equipment provider, we also face competition from alternative cancer treatment methods, such as traditional surgery, chemotherapy, robotic surgery and drug therapies, among others. To compete successfully, we need to demonstrate and convince our customers of the advantages of radiation therapy over other cancer treatment alternatives.

In x-ray imaging components and subsystems, we often compete with companies that have greater financial, marketing and other resources than we have. Some of the major diagnostic imaging systems companies, which are the primary OEM customers for our x-ray components, also manufacture x-ray components, including x-ray tubes, for use in their own imaging systems products. We must compete with these in-house manufacturing operations for business from their affiliated companies. As a result, we must have a competitive advantage in one or more significant areas, which may include lower product cost, better product quality or superior technology and/or performance. We sell a significant volume of our x-ray tubes to OEMs such as Toshiba Corporation, Hitachi Medical Corporation, Philips Medical Systems and GE Healthcare, all of which have in-house x-ray tube production capability. In addition, we compete against other stand-alone, independent x-ray tube manufacturers such as Comet AG and IAE Industria Applicazioni Elettroniche Spa. These companies compete with us for both the OEM business of major diagnostic imaging equipment manufacturers and the independent servicing business for x-ray tubes. The market for flat panel detectors is also very competitive. We incorporate our flat panel detectors into our equipment for IGRT within our Oncology Systems and also sell to a number of OEMs, which incorporate our flat panel detectors into their medical diagnostic, dental, veterinary and industrial imaging systems. Our amorphous silicon based flat panel detector technology competes with other detector technologies such as amorphous selenium, charge-coupled devices and variations of amorphous silicon scintillators. We believe that our product provides a competitive advantage due to lower product cost and better product quality and performance. For flat panel detectors, our significant customers include Carestream Health, Inc. and Toshiba Corporation and we primarily compete against Perkin-Elmer, Inc., Trixell S.A.S., Samsung Electronics and Canon, Inc.

In our SIP business, we compete with other OEM suppliers, primarily outside of the United States in the security and inspection market, and our major competitor is Nuctech Company Limited. The market for our SIP products used for nondestructive testing in industrial applications is small and highly fractured and there is no single major competitor in this nondestructive testing market.
The market for proton therapy products is still developing and is characterized by rapidly evolving technology, high competition and pricing pressure. Our ability to compete successfully depends, in part, on our ability to lower our product costs, develop and provide technically superior, clinically proven products that deliver more precise, cost-effective, high quality clinical outcomes, including integration of IGRT technologies such as OBI. In the proton therapy market, we compete principally with Hitachi Medical Corporation, Ion Beam Applications S.A., Mevion Medical Systems, Inc. (formerly Still River Systems, Inc.) and Sumitomo Heavy Industries, Ltd. There are a number of smaller competitors that are also developing proton therapy products.

Research and Development

Developing products, systems and services based on advanced technology is essential to our ability to compete effectively in the marketplace. We maintain a research and development and engineering staff responsible for product design and engineering. Research and development expenses totaled $171 million, $157 million and $147 million in fiscal years 2011, 2010 and 2009, respectively.

Our research and development are conducted both within the relevant product groups of our businesses and through GTC. GTC maintains technical expertise in x-ray technology, accelerator technology, imaging physics and applications, algorithms and software, electronic design, materials science and biosciences to prove feasibility of new product concepts and to improve current products. Present research topics include new imaging concepts, image-based radiotherapy treatment planning and delivery, real time accommodation of moving targets, functional imaging and combined modality therapy, manufacturing process improvements, improved x-ray tubes and large-area, high resolution digital x-ray sensor arrays for cone-beam CT and other applications. GTC is also pursuing the potential of combining advances in directed energy and imaging technology with the latest breakthroughs in biotechnology by employing targeted energy to enhance the effectiveness of biological and chemical therapeutic agents. In addition, GTC is investigating the use of x-ray and high energy accelerator, detector, and image processing technology for security applications. GTC accepts some sponsored research contracts from external agencies such as the U.S. government or private sources.

Within Oncology Systems, our development efforts focus on enhancing the reliability and performance of existing products and developing new products. This development is conducted primarily in the United States, Switzerland, Canada, England, Finland, India and China. In addition, we support research and development programs at selected hospitals and clinics. Current areas for development within Oncology Systems include linear accelerator systems and accessories for medical applications, information systems, radiation treatment planning software, imaging devices, simulation, patient positioning and equipment diagnosis and maintenance tools.

Within X-ray Products, development is conducted at our Salt Lake City, Utah and Palo Alto, California facilities and is primarily focused on developing and improving x-ray imaging component and subsystem products. Current x-ray tube development areas include improvements to tube life and tube stability and reduction of tube noise. We are also working on x-ray tube designs which will operate at higher power loadings and at higher CT rotational speed to enhance the performance of next generation CT scanners as well as x-ray tubes to enhance the performance of our flat panel detectors. Research in flat panel imaging technology is aimed at developing new panel technologies for low cost radiographic imaging, flexible panel interfaces and cone beam CT.

Within VPT, our development efforts focus on integrating patient set-up, motion management and clinical workflow solutions originally developed in Oncology Systems. We expect that, in order to realize the full potential of the VPT business, we will need to invest substantial resources to properly develop proton therapy technology and build this new business.

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**Manufacturing and Supplies**

We manufacture our medical linear accelerators in Palo Alto, California and in Beijing, China. Our treatment simulator systems and some accelerator subsystems are manufactured in Crawley, United Kingdom and some of our other accessory products in Baden, Switzerland; Helsinki, Finland; Toulouse, France and Winnipeg, Canada. We manufacture our high dose rate brachytherapy systems in Crawley, United Kingdom and Haan, Germany and our brachytherapy treatment planning products in Charlottesville, Virginia. Calypso manufactures certain components of their tumor tracking and motion management products in Seattle, Washington. Our SIP linear accelerators and certain radiographic products are manufactured in Las Vegas, Nevada. We manufacture components and sub-systems for our proton therapy products and systems in Troisdorf, Germany and we plan to develop additional manufacturing facilities as needed for this business. We manufacture our x-ray imaging component and subsystem and flat panel detector products in Salt Lake City, Utah; Charleston, South Carolina; Willich, Germany; and Beijing, China. These facilities employ state-of-the-art manufacturing techniques, and several have been honored by the press, governments and trade organizations for their commitment to quality improvement. These manufacturing facilities are certified by International Standards Organization (“ISO”) under ISO 9001 (for SIP) or ISO 13485 (for medical devices).

Manufacturing processes at our various facilities include machining, fabrication, subassembly, system assembly and final testing. We have invested in various automated and semi-automated equipment for the fabrication and machining of the parts and assemblies that we incorporate into our products. We may, from time to time, invest further in such equipment. Our quality assurance program includes various quality control measures from inspection of raw material, purchased parts and assemblies through on-line inspection. We also receive subassemblies from third-party suppliers and integrate them into a finished system. We outsource the manufacturing of many major subassemblies and perform system design, assembly and testing in-house. We believe outsourcing enables us to reduce fixed costs and capital expenditures, while also providing us with the flexibility to increase production capacity. We purchase material and components from various suppliers that are either standard products or customized to our specifications. We obtain some of the components included in our products from a limited group of suppliers or from a single-source supplier, such as the radioactive sources for high-dose afterloaders, klystrons for linear accelerators; transistor arrays and cesium iodide coatings for flat panel detectors and specialized integrated circuits, x-ray tube targets, housings, glassframes and various other components; and radiofrequency components, magnets and gantry hardware for proton therapy systems. We require certain raw materials such as tungsten, lead and copper for Oncology Systems and SIP; copper, lead, tungsten, rhenium, molybdenum zirconium, and various high grades of steel alloy for x-ray tubes, and high-grade steel, high-grade copper and iron for the VPT business. Worldwide demand, availability and pricing of these raw materials have been volatile, and we expect that availability and pricing will continue to fluctuate in the future.

**Backlog**

Our backlog at the end of fiscal year 2011 was $2.5 billion, of which we expect to recognize approximately 50% to 55% as revenues in fiscal year 2012. Our backlog at the end of fiscal year 2010 was $2.2 billion, of which $1.2 billion was recognized as revenues in fiscal year 2011. Our Oncology Systems backlog represented 88% and 91% of the total backlog at the end of fiscal years 2011 and 2010, respectively. Except for VPT orders, we only recognize orders when product shipment or construction of certain highly customized SIP products is expected to occur within two years and only if any contingencies are deemed perfunctory. In addition, we do not recognize SIP orders from governmental agencies with bid protest provisions until the expiration of the bid protest period. For our VPT business, we recognize orders when construction of the related proton therapy treatment center is reasonably expected to start within two years. Also, we only recognize orders for VPT products with contingencies if we deem the contingencies perfunctory or if we publicly disclose the existence and nature of material contingencies. However, orders will not be recognized if there are major financing contingencies or...
customer board approval contingencies pending. Backlog also includes a small portion of service contracts when they become billable, as well as the amount of deferred revenue and revenue related to acceptance. We perform a semi-annual review to verify that orders in our backlog remain valid. This review identifies aged orders and confirms these orders with our internal sales organization or our customers. Aged orders which are not expected to be converted to revenues during this backlog review are deemed dormant and are no longer included in the reported backlog. Orders may be revised or canceled, either according to their terms or as customers’ needs change; consequently, it is difficult to predict with certainty the amount of backlog that will result in revenues. In fiscal years 2011, 2010 and 2009, we adjusted orders down by $95 million, $124 million (which includes the cancellation of a $62 million proton therapy system order from Skandion Kliniken) and $71 million, respectively, of orders due to adjustments, revisions or cancellations. Our reported net orders are net of all backlog adjustments.

Product and Other Liabilities

Our business exposes us to potential product liability claims that are inherent in the manufacture, sale, installation, servicing and support of medical devices and other devices that deliver radiation. Because our products are involved in the intentional delivery of radiation to the human body; other situations where people may come in contact with radiation (for example, when our SIP products are being used to scan cargo); the collection and storage of patient treatment data for medical analysis and treatment delivery; the planning of radiation treatment and diagnostic imaging of the human body; and the diagnosing of medical problems, the possibility for significant injury and/or death exists. Our medical products operate within our customers’ facilities and network systems, and under quality assurance procedures established by the facility that ultimately result in the delivery of radiation to patients. Human and other errors or accidents may arise from the operation of our products in complex environments with products from other vendors, where interoperability or data sharing protocol may not be optimized even though the equipment or system operate according to specifications. As a result, we may face substantial liability to patients, our customers and others for damages resulting from the faulty, or allegedly faulty, design, manufacture, installation, servicing, support, testing or interoperability of our products, or their misuse or failure, as well as liability related to the loss or misuse of private patient data. We may also be subject to claims for property damages or economic loss related to or resulting from any errors or defects in our products, or the installation, servicing and support of our products. Any accident or mistreatment could subject us to legal costs, adverse publicity and damage to our reputation, whether or not our products or services were a factor. In addition, if a product we design or manufacture is defective (whether due to design, labeling or manufacturing defects, improper use of the product or other reasons), we may be required to recall the product and notify regulatory authorities. We maintain limited product liability insurance coverage and currently self-insure professional liability/errors and omissions liability.

Government Regulation

U.S. Regulations

U.S. laws governing marketing a medical device. In the United States, as a manufacturer and seller of medical devices and devices emitting radiation or utilizing radioactive by-product material, we and some of our suppliers and distributors are subject to extensive regulation by federal governmental authorities, such as the Food and Drug Administration (“FDA”), Nuclear Regulatory Commission (“NRC”), and state and local regulatory agencies, such as the State of California, to ensure the devices are safe and effective and comply with laws governing products which emit, produce or control radiation. Similar international regulations apply overseas. These regulations, which include the U.S. Food, Drug and Cosmetic Act (the “FDC Act”) and regulations promulgated by the FDA, govern, among other things, the design, development, testing, manufacturing, packaging, labeling, distribution, import/export, sale and marketing and disposal of medical devices, post-market surveillance and reporting of serious injuries.
and death, repairs, replacements, recalls and other matters relating to medical devices, radiation emitting devices and devices utilizing radioactive by-product material. State regulations are extensive and vary from state to state. Our Oncology Systems equipment and software, as well as proton therapy systems offered by our VPT business, constitute medical devices subject to these regulations. Our x-ray tube products and flat panel detectors produced by X-ray Products are also considered medical devices. Future products in any of our business segments may constitute medical devices and be subject to regulation. These laws require that manufacturers adhere to certain standards designed to ensure that the medical devices are safe and effective. Under the FDC Act, each medical device manufacturer must comply with quality system regulations that are strictly enforced by the FDA.

Unless an exception applies, the FDA requires that the manufacturer of a new medical device or a new indication for use of, or other significant change in, an existing currently marketed medical device obtain either 510(k) pre-market notification clearance or pre-market approval (“PMA”) before the manufacturer can market and sell those products in the United States. The 510(k) clearance process is applicable when the device introduced into commercial distribution is not substantially equivalent to a legally marketed device or the device is about to be significantly changed or modified in design components, method of manufacture or intended use. The process of obtaining 510(k) clearance generally takes at least three to six months from the date the application is filed, but could take significantly longer, and generally requires submitting supporting design and testing data, which can be extensive and can lengthen the process considerably. After a product receives 510(k) clearance, any modifications or enhancements that could significantly affect its safety or effectiveness, or that would constitute a major change in the intended use of the device, technology, materials, labeling, packaging, or manufacturing process may require a new 510(k) clearance. The FDA requires each manufacturer to make this determination in the first instance, but the FDA can review any such decision. If the FDA disagrees with the manufacturer’s decision, it may retroactively require the manufacturer to submit a request for 510(k) pre-market notification clearance and can require the manufacturer to cease marketing and/or recall the product until 510(k) clearance is obtained. The FDA has recently issued a draft guidance that, if finalized and implemented, will result in manufacturers needing to seek a significant number of new clearances for changes made to legally marketed devices. If we cannot establish that a proposed product is substantially equivalent to a legally marketed device, we must seek pre-market approval through a PMA application. Under the PMA process, the applicant submit extensive supporting data, including, in most cases, data from clinical studies, in the PMA application to establish reasonable evidence of the safety and effectiveness of the product. This process typically takes at least one to two years from the date the PMA is accepted for filing, but can take significantly longer for the FDA to review. To date, we have only manufactured Class I medical devices, which do not require PMA or 510(k) clearance, and Class II medical devices, which require 510(k) clearance. We do not manufacture any Class III medical devices, which require PMA. Our x-ray tubes and flat panel detectors are Class I medical devices, while all of the medical devices produced by our Oncology Systems segment and the proton therapy systems manufactured by our VPT business are Class II medical devices.

Quality systems, audits and failure to comply. Our manufacturing operations for medical devices, and those of our third-party manufacturers, are required to comply with the FDA’s Quality System Regulation (“QSR”), which addresses a company’s responsibility for product design, testing, and manufacturing quality assurance, and the maintenance of records and documentation. The QSR requires that each manufacturer establish a quality systems program by which the manufacturer monitors the manufacturing process and maintains records that show compliance with FDA regulations and the manufacturer’s written specifications and procedures relating to the devices. QSR compliance is necessary to receive and maintain FDA clearance or approval to market new and existing products. The FDA makes announced and unannounced periodic and on-going inspections of medical device manufacturers and may issue reports, known as FDA Form 483 reports when the FDA believes the manufacturer has failed to comply with applicable regulations and/or procedures. If these observations are not promptly and adequately responded to, the FDA may issue a Warning Letter and/or proceed...
directly to other forms of corrective action against us, including total shutdown of production facilities, denial of importation rights to the United States for products manufactured in overseas locations and criminal and civil fines. Inspections usually occur every two years. We have responded to observations issued in a FDA Form 483 related to the May 2011 inspections of our Oncology Systems manufacturing facilities located in Helsinki, Finland and Haan, Germany. These observations generally include issues with complaint investigations, corrective actions and preventive actions, filings required under medical device reporting regulations and purchasing controls.

The FDA and the Federal Trade Commission (“FTC”) also regulate the advertising of our products to ensure that the claims we make are consistent with our regulatory clearances, that there are adequate and reasonable scientific data to substantiate the claims and that our promotional labeling and advertising is neither false nor misleading. In general, we may not promote or advertise our products for uses not within the scope of our intended use statement in our clearances or approvals or make unsupported safety and effectiveness claims.

It is also important that our products comply with electrical safety and environmental standards, such as those of Underwriters Laboratories (“UL”), the Canadian Standards Association (“CSA”), and the International Electrotechnical Commission (“IEC”). In addition, the manufacture and distribution of medical devices utilizing radioactive by-product material requires a specific radioactive material license. Manufacture and distribution of these radioactive sources and devices also must be in accordance with an approved NRC certificate, or an Agreement State registration certificate. Service of these products must be in accordance with a specific radioactive materials license. We are also subject to a variety of additional environmental laws regulating our manufacturing operations and the handling, storage, transport and disposal of hazardous materials, and which impose liability for the cleanup of any contamination from these materials. For a further discussion of these laws and regulations, see “MD&A—Environmental Remediation Liabilities.”

If we or any of our suppliers or distributors fail to comply with FDA and other applicable regulatory requirements or are perceived to potentially have failed to comply, we may face a number of adverse consequences, including adverse publicity affecting both us and our customers; government investigations; partial suspensions or total shutdown of production facilities, or the imposition of operating restrictions; losses of clearances or approvals already granted; or seizures or recalls of our products or those of our customers.

Other applicable U.S. regulations. As a participant in the healthcare industry, we are also subject to extensive laws and regulations protecting the privacy and integrity of patient medical information that we receive or have access to, including the Health Insurance Portability and Accountability Act of 1996 (“HIPAA,”) “fraud and abuse” laws and regulations, including, physician self-referral prohibitions, and false claims laws. From time to time, these laws and regulations may be revised or interpreted in ways that could make it more difficult for our customers to conduct their businesses, such as recent proposed revisions to the laws prohibiting physician self-referrals, and such revisions could have an adverse effect on the demand for our products, and therefore our business and results of operations. We also must comply with numerous federal, state and local laws of more general applicability relating to such matters as safe working conditions, manufacturing practices and fire hazard control.

The laws and regulations and their enforcement are constantly undergoing change, and we cannot predict what effect, if any, changes to these laws and regulations may have on our business. For example, HIPAA was amended by the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), enacted as part of the American Recovery and Reinvestment Act of 2009. The HITECH Act significantly increases the civil money penalties for violations of patient privacy rights protected under HIPAA. Furthermore, business associates who have access to patient health information provided by hospitals and healthcare providers are now directly subject to HIPAA, including the new enforcement scheme and inspection requirements. Moreover, there has been a trend in recent years toward more stringent regulation and enforcement of requirements applicable to medical
device manufacturers who receive or have access to patient health information. Government regulation also may cause considerable delay or even prevent the marketing and full commercialization of future products or services that we may develop, and/or may impose costly requirements on our business. Insurance coverage is not commercially available for violations of law, including the fines, penalties or investigatory costs that may flow to us as the consequence of regulatory violations; consequently, we do not have insurance that would cover this type of liability.

Medicare and Medicaid Reimbursement

The federal and state governments of the U.S. establish guidelines and pay reimbursements to hospitals and free-standing clinics for diagnostic examinations and therapeutic procedures under Medicare at the federal level and Medicaid at the state level. Private insurers often establish payment levels and policies based on reimbursement rates and guidelines established by the government.

The federal government and the Congress review and adjust rates annually, and from time to time consider various Medicare and other healthcare reform proposals that could significantly affect both private and public reimbursement for healthcare services, including radiotherapy and radiosurgery, in hospitals and free-standing clinics. We have seen our customers’ decision-making process complicated by the uncertainty surrounding Medicare reimbursement rates for radiotherapy and radiosurgery in the United States. State government reimbursement for services is determined pursuant to each state’s Medicaid plan, which is established by state law and regulations, subject to requirements of federal law and regulations. The Balanced Budget Act of 1997 revised the Medicaid program to give each state more control over coverage and payment issues. In addition, the U.S. Centers for Medicare and Medicaid Services (“CMS”) has granted many states waivers to allow for greater control of the Medicaid program at the state level. The impact on our business of this greater state control on Medicaid payment for diagnostic services remains uncertain.

We are continuing to evaluate the Affordable Health Care for America Act and its potential impact on our business. Specifically, one of the components of the new law is a 2.3% excise tax on sales of most medical devices, which include our Oncology Systems products, starting in 2013. This tax may put increased pressure on medical device manufacturers and purchasers, and may lead our customers to reduce their orders for products we produce or to request that we reduce the prices we charge for our products in order to offset the tax. Other elements of this new legislation, including comparative effectiveness research, an independent payment advisory board, payment system reforms (including shared savings pilots) and other provisions, could meaningfully change the way healthcare is developed and delivered, and may materially impact numerous aspects of our business, including the demand and availability of our products, the reimbursement available for our products from governmental and third-party payors, and reduced medical procedure volumes.

Various healthcare reform proposals have also emerged at the state level, and we are unable to predict which, if any of these proposals will be enacted. We believe that the uncertainty created by healthcare reform in the United States has complicated our customers’ decision-making process and impacted our Oncology Systems and VPT businesses, and we expect that this uncertainty will persist until there is greater clarity on how the Affordable Health Care for America Act and state proposals will affect healthcare providers.

The sale of medical devices including radiotherapy products, the referral of patients for diagnostic examinations and treatments utilizing such devices, and the submission of claims to third-party payors (including Medicare and Medicaid) seeking reimbursement for such services, are subject to various federal and state laws pertaining to healthcare “fraud and abuse.” These laws include physician self-referral prohibitions, anti-kickback laws and false claims laws. Subject to enumerated exceptions, the federal physician self-referral law, also known as Stark II, prohibits a physician from referring Medicare or Medicaid patients to an entity with which the physician (or a family member) has a financial relationship, if the referral is for a “designated health service,” which is defined explicitly to include...
radiology and radiation therapy services. Anti-kickback laws make it illegal to solicit, induce, offer, receive or pay any remuneration in exchange for the referral of business, including the purchase of medical devices from a particular manufacturer or the referral of patients to a particular supplier of diagnostic services utilizing such devices. False claims laws prohibit anyone from knowingly and willfully presenting, or causing to be presented, claims for payment to third-party payors (including Medicare and Medicaid) that are false or fraudulent, for services not provided as claimed, or for medically unnecessary services. The Office of the Inspector General prosecutes violations of fraud and abuse laws and any violation may result in criminal and/or civil sanctions including, in some instances, imprisonment and exclusion from participation in federal healthcare programs such as Medicare and Medicaid.

Foreign Regulations

Our operations, sales and service of our products outside the United States are subject to regulatory requirements that vary from country to country and may differ significantly from those in the United States. In general, our products are regulated outside the United States as medical devices by foreign governmental agencies similar to the FDA.

Marketing a medical device internationally. In order for us to market our products internationally, we must obtain clearances or approvals for products and product modifications. We are required to affix the Conformité Européenne (“CE”) mark to our products in order to sell them in member countries of the European Economic Area (“EEA”). The CE mark is an international symbol of adherence to certain essential principles of safety and effectiveness, which once affixed enables a product to be sold in member countries of the EEA. The CE mark is also recognized in many countries outside the EEA, such as Switzerland and Australia, and can assist in the clearance process. In order to receive permission to affix the CE mark to our products, we must obtain Quality System certification, e.g., ISO 13485, and must otherwise have a quality management system that complies with the European Union (“EU”) Medical Device Directive. The ISO promulgates standards for certification of quality assurance operations. We are certified as complying with the ISO 9001 for our SIP products and ISO 13485 for our medical devices. Several Asian countries, including Japan and China, have adopted regulatory schemes that are comparable, and in some cases more stringent, than the EU scheme. To import medical devices into Japan, the requirements of Japan’s New Medical Device Regulation must be met and a “shonin,” the approval to sell medical products in Japan, must be obtained. Similarly, in China a registration certification issued by the State Food and Drug Administration and a China Compulsory Certification mark for certain products are required to sell medical devices in that country.

Obtaining such certifications on our products can be time-consuming and can cause us to delay marketing or sales of certain products in such countries. Similarly, prior to selling a device in Canada, manufacturers of Class II, III and IV devices must obtain a medical device license. We sell Class II and Class III devices in Canada. Additionally, many countries have laws and regulations relating to radiation and radiation safety that also apply to our products. In most countries, radiological regulatory agencies require some form of licensing or registration by the facility prior to acquisition and operation of an x-ray generating device or a radiation source. The handling, transportation and the recycling of radioactive metals and source materials are also highly regulated.

A number of countries, including the members of the EU, have implemented or are implementing regulations that would require manufacturers to dispose, or bear certain disposal costs, of products at the end of a product’s useful life and restrict the use of some hazardous substances in certain products sold in those countries. For a further discussion of these regulations, see “MD&A—Critical Accounting Estimates and Environmental Remediation Liabilities."

Manufacturing and selling a device internationally. We are also subject to laws and regulations outside the United States applicable to manufacturers of radiation-producing devices and products utilizing radioactive materials, and laws and regulations of general applicability relating to matters such as environmental protection, safe working conditions, manufacturing practices and other matters, in each
case that are often comparable to, if not more stringent than, regulations in the United States. In addition, our sales of products in foreign countries are also subject to regulation of matters such as product standards, packaging requirements, labeling requirements, import restrictions, environmental and product recycling requirements, tariff regulations, duties and tax requirements. In some countries, we rely on our foreign distributors to assist us in complying with foreign regulatory requirements.

Other applicable international regulations. In addition to the U.S. laws regarding the privacy and integrity of patient medical information, we are subject to similar laws and regulations in foreign countries covering data privacy and other protection of health and employee information. Particularly within the EU/EEA/Switzerland area, data protection legislation is comprehensive and complex and there has been a recent trend toward more stringent enforcement of requirements regarding protection and confidentiality of personal data. We are also subject to international “fraud and abuse” laws and regulations, as well as false claims and misleading advertisement laws.

Patent and Other Proprietary Rights
We place considerable importance on obtaining and maintaining patent, copyright and trade secret protection for significant new technologies, products and processes, because of the length of time and expense associated with bringing new products through the development process and to the marketplace.

We generally rely upon a combination of patents, copyrights, trademarks, trade secret and other laws, and contractual restrictions on disclosure, copying and transferring title, including confidentiality agreements with vendors, strategic partners, co-developers, employees, consultants and other third parties, to protect our proprietary rights in the developments, improvements and inventions that we have originated and which are incorporated in our products or that fall within our fields of interest. As of September 30, 2011, we owned 300 patents issued in the United States and 102 patents issued throughout the rest of the world and had 362 patent applications on file with various patent agencies worldwide. We intend to file additional patent applications as appropriate. We have trademarks, both registered and unregistered, that are maintained and enforced to provide customer recognition for our products in the marketplace. We also have agreements with third parties that provide for licensing of patented or proprietary technology, including royalty-bearing licenses and technology cross-licenses.

Environmental Matters
For a discussion of environmental matters, see “Government Regulation—Foreign Regulations” and “MD&A—Environmental Remediation Liabilities,” which discussions are incorporated herein by reference.

Financial Information about Geographic Areas
We do business globally with manufacturing in the United States, Europe and China and with sales and service operations and customers throughout the world. Roughly half of our revenues are generated from our international regions. In addition to the potentially adverse impact of foreign regulations, see “Government Regulation—Foreign Regulations,” we also may be affected by other factors related to our international sales such as: lower average selling prices and profit margins; longer time periods from shipment to revenue recognition (which increases revenue recognition deferrals and time in backlog); and longer time periods from shipment to cash collection (which increases days sales outstanding (“DSO”). So to the extent that the geographic distribution of our sales continues to shift more towards international regions, our overall revenues and margins may suffer. We sell our products internationally predominantly in local currencies, but our cost structure is weighted towards the U.S. dollar. Accordingly, there may be adverse consequences from fluctuations in foreign currency exchange rates, which may affect both the affordability and competitiveness of our products and our profit margins. We do engage in currency hedging strategies to offset the effect of currency exchange fluctuations, but the protection offered by these hedges depends upon the timing of transactions, forecast volatility, effectiveness of such hedges and the extent of currency fluctuation.
We are also exposed to other economic, political and other risks inherent in doing business globally. For an additional discussion of these risks, see “Risk Factors.”

For a discussion of financial information about geographic areas, see Note 17, “Segment Information” of the Notes to the Consolidated Financial Statements.

**Discontinued Operations**

In September 2008, we approved a plan to sell the scientific research instruments business (“Research Instruments”) that we acquired as part of our acquisition of ACCEL in order to focus our efforts on the development of the proton therapy systems portion of the business. Research Instruments developed, manufactured and serviced highly customized scientific instrument components and systems for fundamental and applied physics research primarily for national research laboratories worldwide. The sale of Research Instruments was completed in the second quarter of fiscal year 2009.

In fiscal year 2011, we recognized a loss of $9.7 million for additional costs to settle the remaining customer contract related to Research Instruments. As of September 30, 2011, we had no remaining obligations related to Research Instruments. We have classified Research Instruments as a discontinued operation in our Consolidated Statements of Earnings and Consolidated Balance Sheets for all periods presented. See Note 18, “Discontinued Operations” of the Notes to the Consolidated Financial Statements for detailed discussion. Research Instruments was previously included with the VPT business, which is reported under the “Other” category in Note 17, “Segment Information” of the Notes to the Consolidated Financial Statements.

**Employees**

We had approximately 5,700 full-time and part-time employees worldwide, 3,300 in the United States and 2,400 elsewhere at September 30, 2011. None of our employees based in the United States are unionized or subject to collective bargaining agreements. Employees based in some foreign countries may, from time to time, be subject to collective bargaining agreements. We currently consider our relations with our employees to be good.

**Information Available to Investors**

As soon as reasonably practicable after our filing or furnishing the information to the SEC we make the following available free of charge on the Investors page of our website http://www.varian.com: our annual reports on Form 10-K; quarterly reports on Form 10-Q; and current reports on Form 8-K (including any amendments to those reports); and our proxy statements. Our Code of Business Ethics, Corporate Governance Guidelines and the charters of the Audit Committee, Compensation and Management Development Committee and Nominating and Corporate Governance Committee are also available on the Investors page of our website. Please note that information on, or that can be accessed through, our website is not deemed “filed” with the SEC and is not to be incorporated by reference into any of our filings under the Securities Act of 1933, as amended (the “Securities Act”), or the Securities Exchange Act of 1934, as amended (the “Exchange Act”).
Executive Officers of the Registrant

The biographical summaries of our executive officers, as of November 1, 2011, as of are as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Position</th>
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<tbody>
<tr>
<td>Timothy E. Guertin</td>
<td>62</td>
<td>President and Chief Executive Officer</td>
</tr>
<tr>
<td>Dow R. Wilson</td>
<td>52</td>
<td>Corporate Executive Vice President and Chief Operating Officer</td>
</tr>
<tr>
<td>Elisha W. Finney</td>
<td>50</td>
<td>Corporate Senior Vice President, Finance and Chief Financial Officer</td>
</tr>
<tr>
<td>Kolleen T. Kennedy</td>
<td>52</td>
<td>Corporate Senior Vice President and President, Oncology Systems</td>
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<tr>
<td>Robert H. Kluge</td>
<td>65</td>
<td>Corporate Senior Vice President and President, X-ray Products</td>
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<tr>
<td>Tai-yun Chen</td>
<td>59</td>
<td>Corporate Vice President, Finance and Corporate Controller</td>
</tr>
<tr>
<td>John W. Kuo</td>
<td>48</td>
<td>Corporate Vice President, General Counsel and Corporate Secretary</td>
</tr>
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*Timothy E. Guertin* has been Chief Executive Officer since February 2006 and President since August 2005. Previously, Mr. Guertin served as Chief Operating Officer from October 2004 to February 2006, and Corporate Executive Vice President from October 2002 to August 2005. Mr. Guertin also served as President of our Oncology Systems business unit from 1992 to January 2005. Mr. Guertin was Corporate Vice President from 1992 to 2002. Mr. Guertin has held various other positions in the medical systems business during his 35 years with the Company. Mr. Guertin holds a B.S. degree in electrical engineering and computer science from the University of California at Berkeley.

*Dow R. Wilson* was appointed Corporate Executive Vice President and Chief Operating Officer effective October 2011. Mr. Wilson served as Corporate Executive Vice President and President, Oncology Systems from August 2005 through September 2011. Mr. Wilson served as Corporate Vice President and President, Oncology Systems from January 2005 to August 2005. Prior to joining the Company in January 2005, Mr. Wilson was Chief Executive Officer of the Healthcare-Information Technologies business in General Electric (a diversified technology and services company), from 2003 to 2005. Previously, Mr. Wilson served as General Manager, Surgical, x-ray and Interventional Businesses and General Manager, Functional Imaging of the Healthcare-Information Technologies business from 2002 to 2003, and was General Manager, Computed Tomography of the Healthcare-Information Technologies business from 2000 to 2002. During the previous 15 years, Mr. Wilson held various management positions within General Electric. Mr. Wilson holds a B.A. degree in English from Brigham Young University and an M.B.A. degree from Dartmouth’s Amos Tuck School of Business. Mr. Wilson has served on the board of directors of Saba Software, Inc. (an e-learning software provider) since August 2006 and in August 2011 was named the lead independent director of that board.

*Elisha W. Finney* was appointed Corporate Senior Vice President, Finance, in addition to being Chief Financial Officer, in January 2005. Ms. Finney was Corporate Vice President and Chief Financial Officer from April 1999 to January 2005. Ms. Finney has held various other positions, including Treasurer, during her 23 years with the Company. Ms. Finney holds a B.B.A. degree in risk management and insurance from the University of Georgia and an M.B.A. degree from Golden Gate University in San Francisco. Ms. Finney was appointed a director of Thoratec Corporation (a medical device manufacturer) in June 2007 and joined the board of Altera Corporation (a supplier of custom logic solutions) in August 2011.

*Kolleen T. Kennedy* was appointed Corporate Senior Vice President and President, Oncology Systems effective October 2011. From January 2006 through September 2011, Ms. Kennedy served as Vice President, Oncology Systems Customer Service and Support. Prior to that, Ms. Kennedy was the Company’s Vice President, Oncology Systems Marketing, Product Management and Engineering from September 2004 to January 2006. Prior to becoming Vice President, Ms. Kennedy served in various marketing management positions since she joined the Company in 1997. Ms. Kennedy holds a B.S. degree in Radiation Oncology and a B.S. degree in Psychology, both from Wayne State University, as well as an M.B.A. in Medical Physics from the University of Colorado.
Robert H. Kluge was appointed Corporate Senior Vice President and President, X-ray Products of the Company in February 2008. Prior to that, Mr. Kluge served as Corporate Vice President and President, X-ray Products from December 1999 to February 2008 and as Vice President and General Manager of our X-ray Products business from 1993 to December 1999. Before joining the Company in 1993, Mr. Kluge held various positions with Picker International (an x-ray systems manufacturer). Mr. Kluge holds a B.A. degree in economics and an M.B.A. degree in finance from the University of Wisconsin.

Tai-yun Chen was appointed Corporate Vice President, Finance and Corporate Controller in August 2006. From February 2006 to August 2006, Ms. Chen served as the Company’s Operations Controller. Prior to that, from January 2002 to February 2006, Ms. Chen was the Company’s Assistant Corporate Controller, and from 2000 to January 2002 Ms. Chen was the Company’s Director of Corporate Accounting. Ms. Chen has served in various accounting management positions throughout the Company during her 28 years with the Company. Ms. Chen holds a bachelor’s degree in economics from the National Chung Chi University in Taiwan and a master’s degree in managerial economics from the University of California at Santa Barbara.

John W. Kuo was appointed Corporate Vice President, General Counsel in July 2005 and Corporate Secretary in February 2005. Mr. Kuo joined the Company as Senior Corporate Counsel in March 2003 and became Associate General Counsel in March 2004. Prior to joining the Company, Mr. Kuo was General Counsel and Secretary at BroadVision, Inc. (an e-commerce software provider) in 2002 and held senior legal positions at 3Com Corporation (a networking equipment provider) from 1997 to 2002. Mr. Kuo has previously been with the law firms of Gray Cary Ware & Freidenrich (now DLA Piper) and Fulbright & Jaworski. Mr. Kuo holds a B.A. degree from Cornell University and a J.D. degree from Boalt Hall School of Law at the University of California at Berkeley.

Item 1A. Risk Factors

The following risk factors and other information included in this Annual Report on Form 10-K should be carefully considered. Although the risk factors described below are the ones management deems significant, additional risks and uncertainties not presently known to us or that we presently deem less significant may also impair our business operations. If any of the following risks actually occur, our business, operating results, and financial condition could be adversely affected.

IF OUR PRODUCTS AND PRODUCT LINES FAIL TO CONTINUE TO MEET CUSTOMER DEMANDS, OUR PRODUCTS MAY BECOME LESS USEFUL OR OBSOLETE AND OUR OPERATING RESULTS WILL SUFFER

We believe that IMRT, including volumetric modulated arc therapy, and IGRT have become accepted standards for treatment in the radiation oncology market. Demand for our IMRT and IGRT products have been the drivers for our net orders and revenues in Oncology Systems and, because of the significance of Oncology Systems, on our business in general. We recently introduced TrueBeam, a new line of linear accelerators for radiotherapy and radiosurgery, and UNIQUE, a low-energy linear accelerator for more price sensitive markets in international regions, to meet the evolving needs of our IMRT and IGRT customers. We believe TrueBeam will be a valuable tool for clinicians in the fight against cancer and to stimulate faster replacement of older systems in our installed base. We also believe that our RapidArc products for volumetric modulated arc therapy, are a significant advance in IMRT treatments and can help drive longer term demand for our linear accelerators and IMRT- and IGRT-related products. Orders for these new products and products lines have contributed greatly to our recent orders growth and are keys to our future success. If our customers do not purchase these products or if future studies call into question the effectiveness of these or our other IMRT or IGRT products (including other volumetric modulated arc therapy products) or show negative side effects, or if other more effective technologies are introduced, our net orders, revenues and financial results could suffer. As more institutions buy or upgrade to achieve IMRT and IGRT capabilities, the market for these
products (including volumetric modulated arc therapy products) may become saturated. Alternatively, the marketplace may conclude that functions and features of our products should no longer be an element of a generally accepted diagnostic or treatment regimen. If this occurs, the market for our products may be adversely affected and they may become less useful or obsolete.

Our X-ray Products business sells products primarily to a small number of imaging system OEM customers who use our products in their medical diagnostic and industrial imaging systems. To succeed, we must provide x-ray tube and flat panel detector products that meet customer demands for lower cost, better product quality and superior technology and performance. If we are unable to continue to innovate our X-ray Products technology and anticipate our customers’ demands in the areas of cost, quality, technology and performance, then our customers may purchase from other tube or panel manufacturers (including the in-house operations of some of these customers), which would negatively impact this business.

In both the Oncology Systems and X-ray Products businesses, and in our other product lines, we may be unable to accurately anticipate changes in our markets and the direction of technological innovation and demands of our customers. Our competitors may develop products or processes that are superior to what we can then offer. If this occurs, the market for our products may be adversely affected and they may become less useful or obsolete. Any development adversely affecting the markets for our products would force us to reduce production volumes or to discontinue manufacturing one or more of our products or product lines and would reduce our revenues and earnings.

**OUR SUCCESS DEPENDS ON THE SUCCESSFUL DEVELOPMENT, INTRODUCTION AND COMMERCIALIZATION OF NEW GENERATIONS OF PRODUCTS AND ENHANCEMENTS TO EXISTING PRODUCT LINES**

Rapid change and technological innovation characterize the Oncology Systems market. Our products often have long development and government approval cycles, so we must anticipate changes in the marketplace, in technology and in customer demands. Our success depends on the successful development, introduction and commercialization of new generations of products, treatment systems and enhancements to and/or simplification of existing product lines. Our Oncology Systems products, including new products such as TrueBeam and RapidArc, are technologically complex and must keep pace with, if not be superior to, the products of our competitors. Our X-ray Products business must also continually develop improved and lower cost products. We are making significant investments in long-term growth initiatives, such as development of our SIP and VPT businesses, and expect that we will need to invest more to develop and commercialize the products and technology for these businesses. Accordingly, many of our products may require significant planning, design, development and testing, as well as significant capital commitments, involvement of senior management and other investments on our part. We may need to spend more time and money than we expect to develop and introduce new products or enhancements and, even if we succeed, they may not be sufficiently profitable that we are able to recover all or a meaningful part of our investment. Once introduced, new products may adversely impact orders and sales of our existing products, or make them less desirable or even obsolete, and could adversely impact our revenues and operating results. Compliance with regulations, competitive alternatives, and shifting market preferences may also impact our success with new products or enhancements.

Our ability to successfully develop and introduce new products and product enhancements and simplifications, and the revenues and costs associated with these efforts, are affected by our ability to:

- properly identify customer needs;
- prove the feasibility of new products;
- limit the time required from proof of feasibility to routine production;
- comply with internal quality assurance systems and processes timely and efficiently;
Furthermore, we cannot be sure that we will be able to successfully develop, manufacture or introduce new products, treatment systems or enhancements, the roll-out of which involves compliance with complex quality assurance processes, including the QSR of the FDA. Failure to complete these processes timely and efficiently could result in delays that could affect our ability to attract and retain customers, or could cause customers to delay or cancel orders, causing our revenues and operating results to suffer.

New products generally take longer to install than well-established products. Because a portion of a product’s revenue is generally tied to installation and acceptance of the product, our recognition of revenue associated with new products may be deferred longer than expected. In addition, even if we succeed in our product introductions, potential customers may not decide to upgrade their equipment, or customers may delay delivery of some of our more sophisticated products because of the longer preparation and renovation of treatment rooms required. As a result, our revenues and other financial results could be adversely affected.

SLIGHTLY MORE THAN HALF OF OUR REVENUES ARE INTERNATIONAL, AND ECONOMIC, POLITICAL AND OTHER RISKS ASSOCIATED WITH INTERNATIONAL SALES AND OPERATIONS COULD ADVERSELY AFFECT OUR SALES OR MAKE THEM LESS PREDICTABLE

We conduct business globally. Our international revenues accounted for approximately 55%, 57% and 50% of revenues from continuing operations during fiscal years 2011, 2010 and 2009, respectively. As a result, we must provide significant service and support globally. We intend to continue to expand our presence in international markets and expect to expend significant resources in doing so, although we cannot be sure we will be able to meet our sales, service and support objectives or obligations, or recover our investments. Accordingly, our future results could be harmed by a variety of factors, including:

- the difficulties in enforcing agreements and collecting receivables through many foreign country’s legal systems;
- the longer payment cycles associated with many foreign customers;
- currency fluctuations;
- changes in the political, regulatory, safety or economic conditions in a country or region;
- the imposition by foreign countries of additional taxes, tariffs or other restrictions on foreign trade;
- the lower sales prices and gross margins usually associated with sales of our products in the international region;
Although our orders and sales fluctuate from period to period, in recent years our international region has represented a larger share of our business. The more we depend on sales in the international region, the more vulnerable we become to these factors.

As of September 30, 2011, 97% of our cash and cash equivalents were held abroad. If these funds were repatriated to the United States, they could be subject to additional taxation and our overall tax rate and our results of operations could suffer.

Our effective tax rate is impacted by tax laws in both the United States and in the respective countries in which our international subsidiaries do business. Earnings from our international region are generally taxed at rates lower than U.S. rates. A change in the percentage of our total earnings from the international region, or a change in the mix of particular tax jurisdictions within the international region could cause our effective tax rate to increase or decrease. Also, we are not currently taxed in the United States on certain undistributed earnings of certain foreign subsidiaries. These earnings could become subject to incremental foreign withholding or U.S. federal and state taxes should they either be deemed or actually remitted to the United States, or if tax laws change, in which case our financial results could be adversely affected. In addition, Congress has considered proposals that would significantly change U.S. taxation of U.S.-based multinational corporations. Although we cannot predict whether or in what form Congress would enact any such proposals, legislation of this type could negatively impact our effective tax rate and adversely affect our financial results.

**OUR RESULTS HAVE BEEN AND MAY CONTINUE TO BE AFFECTED BY CONTINUING WORLDWIDE ECONOMIC INSTABILITY**

Since fiscal year 2008, the global economy has been impacted by the sequential effects of the subprime lending crisis; the credit market crisis; collateral effects on the finance and banking industries; volatile currency exchange rates and energy costs; concerns about inflation (deflation), slower economic activity, consumer confidence, corporate profits and capital spending, adverse business conditions, liquidity and unemployment; and concerns over the downgrade of U.S. sovereign debt and continued sovereign debt uncertainties in Europe and other foreign countries. These conditions have shrunk capital equipment budgets, slowed decision-making, made financing for large equipment purchases more expensive and more time consuming to obtain, and made it difficult for our customers and our vendors to accurately forecast and plan future business activities and reduced their confidence. This, in turn, has caused our customers to freeze, delay or dramatically reduce purchases and capital project expenditures. Even though economic activity has shown some improvement, recovery has been sluggish and we cannot predict the strength or sustainability of an economic recovery, in general or specifically in the healthcare industry. It has taken time for our customers to establish new budgets and may take more time for them.
to fully return to normal purchasing patterns. Project delays may continue, particularly as they relate to large scale or government projects, which may be affected by austerity measures. Alternatively, in the past, some countries, including Japan, have adopted and may in the future adopt government stimulus programs to revitalize their economies and improve healthcare and medical services. The availability of stimulus programs in the future could positively affect our results in one period and adversely affect our results in other periods, making it difficult for investors to compare our financial results between fiscal periods. Weak economic recovery may also disrupt supply if vendors consolidate or go out of business. As with our customers and vendors, these economic conditions make it more difficult for us to accurately forecast and plan our future business activities. Historically, our business has felt the effects of market trends later than other sectors in the healthcare industry, such as diagnostic radiology, and we may experience the effects of any economic recovery later than others in the healthcare industry. A continued weak or deteriorating healthcare market would inevitably adversely affect our business, financial conditions and results of operations.

WE FACE SIGNIFICANT COSTS IN ORDER TO COMPLY WITH LAWS AND REGULATIONS APPLICABLE TO THE MANUFACTURE AND DISTRIBUTION OF OUR PRODUCTS, AND FAILURE OR DELAYS IN OBTAINING REGULATORY CLEARANCES OR APPROVALS, OR FAILURE TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS COULD PREVENT US FROM DISTRIBUTING OUR PRODUCTS, REQUIRE US TO RECALL OUR PRODUCTS AND RESULT IN SIGNIFICANT PENALTIES

Our products and those of OEMs that incorporate our products are subject to extensive and rigorous government regulation in the United States. Compliance with these laws and regulations is expensive and time-consuming, and failure to comply with these laws and regulations could adversely affect our business. Furthermore, public media reports on misadministrations of radiotherapy in patients and focus on the role of the FDA in regulating medical devices has led to increased scrutiny of medical device companies and an increased likelihood of enforcement actions.

U.S. laws governing marketing a medical device. In the United States, as a manufacturer and seller of medical devices and devices emitting radiation or utilizing radioactive by-product material, we and some of our suppliers and distributors are subject to extensive regulation by federal governmental authorities, such as the FDA, NRC and state and local regulatory agencies, such as the State of California, to ensure the devices are safe and effective and comply with laws governing products which emit, produce or control radiation. These regulations govern, among other things, the design, development, testing, manufacturing, packaging, labeling, distribution, import/export, sale and marketing and disposal of our products.

Unless an exception applies, the FDA requires that the manufacturer of a new medical device or a new indication for use of, or other significant change in, existing currently marketed medical device obtain either 510(k) pre-market notification clearance or PMA before it can market or sell those products in the United States. Modifications or enhancements to a product that could significantly affect its safety or effectiveness, or that would constitute a major change in the intended use of the device, technology, materials, labeling, packaging, or manufacturing process may also require a new 510(k) clearance. The FDA has recently issued a draft guidance that, if finalized and implemented, will result in manufacturers needing to seek a significant number of new clearances for changes made to legally marketed devices. Although manufactures make the initial determination whether a change to a cleared device requires a new 510(k) clearance, we cannot assure you that the FDA will agree with our decisions not to seek additional approvals or clearances for particular modifications to our products or that we will be successful in obtaining new 510(k) clearances for modifications. Obtaining clearances or approvals is time-consuming, expensive and uncertain. We may not be able to obtain the necessary clearances or approvals or may be unduly delayed in doing so, which could harm our business. Furthermore, even if we are granted regulatory clearances or approvals, they may include significant limitations on the indicated uses of the product, which may limit the market for the product. If we were unable to obtain required
FDA clearance or approval for a product or unduly delayed in doing so, or the uses of that product were limited, our business could suffer. In the past, in the United States, our devices have generally been subject to 510(k) clearance or exempt from 510(k) clearance. The 510(k) clearance process is generally less time-consuming, expensive and uncertain than the PMA process. However, there are some in the regulatory field who believe that certain medical devices should be required to use the PMA approval process, or a special more time-consuming 510(k) clearance process, rather than the current 510(k) clearance process. If we were required to use either of these lengthy processes for future products or product modifications, it could delay or prevent release of the proposed products or modifications, which could harm our business. The FDA recently announced its 510(k) clearance reform plan. We are currently analyzing how this plan, if fully implemented, may affect us and our ability to obtain product clearances.

Further, as we enter new businesses or pursue new business opportunities, such as opportunities that require clinical trials, we may become subject to additional laws, rules and regulations, including FDA rules and regulations that are applicable to the clinical trial process and protection of study subjects. Becoming familiar with and implementing the infrastructure necessary to comply with these laws, rules and regulations could be quite costly. In addition, failure to comply with these laws, rules and regulations could delay the introduction of new products and could adversely affect our business.

Quality systems, audits and failure to comply. Our manufacturing operations for medical devices, and those of our third-party manufacturers, are required to comply with the FDA’s QSR, as well as other federal and state regulations for medical devices and radiation emitting products. The FDA makes announced and unannounced periodic and on-going inspections of medical device manufacturers to determine compliance with QSR and in connection with these inspections issues reports, known as Form FDA 483 reports when the FDA believes the manufacturer has failed to comply with applicable regulations and/or procedures. If observations from the FDA issued on Form FDA 483 reports are not addressed and/or corrective action taken in a timely manner and to the FDA’s satisfaction, the FDA may issue a Warning Letter and/or proceed directly to other forms of enforcement action. Similarly, if a Warning Letter were issued, prompt corrective action to come into compliance would be required. Failure to respond timely to Form FDA 483 observations, a Warning Letter or other notice of noncompliance and to promptly come into compliance could result in the FDA bringing enforcement action against us, which could include the total shutdown of our production facilities, denial of importation rights to the U.S. for products manufactured in overseas locations, adverse publicity and criminal and civil fines. The expense and costs of any corrective actions that we may take, which may include products recalls, correction and removal of products from customer sites and/or changes to our product manufacturing and quality systems, could adversely impact our financial results and may also divert management resources, attention and time. Additionally, if a Warning Letter were issued, customers could delay purchasing decisions or cancel orders, and we could face increased pressure from our competitors who could use the Warning Letter against us in competitive sales situations, either of which could adversely affect our reputation, business and stock price. Currently, we are responding to and working with the FDA to fully resolve Form FDA 483 observations issued in May 2011 related to the inspections of our Oncology Systems manufacturing facilities located in Helsinki, Finland and Haan, Germany. These observations generally include issues with complaint investigations, corrective actions and preventive actions, filings required under medical device reporting regulations and purchasing controls. While in the past, we have received Form 483 observations that we successfully resolved with the FDA, we cannot be certain that we will have similar success in promptly resolving these observations.

In addition, we are required to timely file various reports with the FDA, including reports required by the medical device reporting regulations (“MDRs”), that require that we report to regulatory authorities if our devices may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur. If these
reports are not filed timely, regulators may impose sanctions and sales of our products may suffer, and we may be subject to product liability or regulatory enforcement actions, all of which could harm our business.

If we initiate a correction or removal of a device to reduce a risk to health posed by the device, we would be required to submit a publicly available Correction and Removal report to the FDA and in many cases, similar reports to other regulatory agencies. This report could be classified by the FDA as a device recall which could lead to increased scrutiny by the FDA, other international regulatory agencies and our customers regarding the quality and safety of our devices. Furthermore, the submission of these reports have been and could be used by competitors against us in competitive situations and cause customers to delay purchase decisions, cancel orders or adversely affect our reputation.

Our medical devices utilizing radioactive material are subject to the NRC clearance and approval requirements, and the manufacture and sale of these products are subject to extensive federal and state regulation that varies from state to state and among regions. Our manufacture, distribution, installation and service of medical devices utilizing radioactive material or emitting radiation also requires us to obtain a number of licenses and certifications for these devices and materials. Service of these products must also be in accordance with a specific radioactive materials license. Obtaining licenses and certifications may be time consuming, expensive and uncertain. In addition, we are subject to a variety of environmental laws regulating our manufacturing operations and the handling, storage, transport and disposal of hazardous materials, and which impose liability for the cleanup of any contamination from these materials. In particular, the handling and disposal of radioactive materials resulting from the manufacture, use or disposal of our products may impose significant costs and requirements. Disposal sites for the lawful disposal of materials generated by the manufacture, use or decommissioning of our products may no longer accept these materials in the future, or may accept them on unfavorable terms.

The FDA and the FTC also regulate advertising and promotion of our products to ensure that the claims we make are consistent with our regulatory clearances, that there are adequate and reasonable scientific data to substantiate the claims and that our promotional labeling and advertising is neither false nor misleading in any respect. If the FDA or FTC determines that any of our advertising or promotional claims are misleading, not substantiated or not permissible, we may be subject to enforcement actions, including Warning Letters, and may be required to revise our promotional claims and make other corrections or restitutions.

If we or any of our suppliers, distributors or customers fail to comply with FDA, FTC and other applicable U.S. regulatory requirements or are perceived to potentially have failed to comply, we may face:

- adverse publicity affecting both us and our customers;
- increased pressures from our competitors;
- investigations by governmental authorities or Warning Letters;
- fines, injunctions, and civil penalties;
- partial suspensions or total shutdown of production facilities, or the imposition of operating restrictions;
- increased difficulty in obtaining required FDA clearances or approvals;
- losses of clearances or approvals already granted;
- seizures or recalls of our products or those of our customers;
- delays in purchasing decisions by customers or cancellation of existing orders;
- the inability to sell our products;
As a participant in the healthcare industry, we are also subject to extensive laws and regulations protecting the privacy and integrity of patient medical information that we receive, including HIPAA, “fraud and abuse” laws and regulations, including physician self-referral prohibitions, and false claims laws. From time to time, these laws and regulations may be revised or interpreted in ways that could make it more difficult for our customers to conduct their businesses, such as recent proposed revisions to the laws prohibiting physician self-referrals, and such revisions could have an adverse effect on the demand for our products, and therefore our business and results of operations. We also must comply with numerous federal, state and local laws of more general applicability relating to such matters as safe working conditions, manufacturing practices and fire hazard control.

The laws and regulations and their enforcement are constantly undergoing change, and we cannot predict what effect, if any, changes to these laws and regulations may have on our business. For example, HIPAA was amended by the HITECH Act, enacted as part of the American Recovery and Reinvestment Act of 2009. The HITECH Act significantly increases the civil money penalties for violations of patient privacy rights protected under HIPAA. Furthermore, business associates who have access to patient health information provided by hospitals and healthcare providers are now directly subject to HIPAA, including the new enforcement scheme and inspection requirements. Moreover, there has been a trend in recent years toward more stringent regulation and enforcement of requirements applicable to medical device manufacturers who receive or have access to patient health information.

Government regulation also may cause considerable delay or even prevent the marketing and full commercialization of future products or services that we may develop, and/or may impose costly requirements on our business. Insurance coverage is not commercially available for violations of law, including the fines, penalties or investigatory costs that may flow to us as the consequence of regulatory violations; consequently, we do not have insurance that would cover this type of liability.

COMPLIANCE WITH FOREIGN LAWS AND REGULATIONS APPLICABLE TO THE MANUFACTURE AND DISTRIBUTION OF OUR PRODUCTS MAY BE COSTLY, AND FAILURE TO COMPLY MAY RESULT IN SIGNIFICANT PENALTIES

Regulatory requirements affecting our operations and sales outside the United States vary from country to country, often differing significantly from those in the United States. In general, outside the United States, our products are regulated as medical devices by foreign governmental agencies similar to the FDA.

Marketing a medical device internationally. In order for us to market our products internationally, we must obtain clearances or approvals for products and product modifications. These processes (including for example in the European Union (“EU”), the European Economic Area (“EEA”), Switzerland, China, Japan and Canada) can be time consuming, expensive and uncertain, which can delay our ability to market products in those countries. Delays in receipt of or failure to receive regulatory approvals, the inclusion of significant limitations on the indicated uses of a product, the loss of previously obtained approvals or failure to comply with existing or future regulatory requirements could restrict or prevent us from doing business in a country or subject us to a variety of enforcement actions and civil or criminal penalties, which would adversely affect our business.

Within the EEA, we must affix a CE mark, a European marking of conformity that indicates that a product meets the essential requirements of the Medical Device Directive. This conformity to the Medical Device Directive is done through self-declaration and is verified by an independent certification body, called a “Notified Body.” Once clearance is obtained and the CE mark is affixed to the device,
the Notified Body will regularly audit us to ensure that we remain in compliance with the applicable European laws and Medical Device Directive. By affixing the CE mark marking to our product, we are certifying that our products comply with the laws and regulations required by the EEA countries, thereby allowing the free movement of our products within these countries and others that accept CE mark standards. If we cannot support our performance claims and demonstrate compliance with the applicable European laws and Medical Device Directive, we would lose our right to affix the CE mark to our products, which would prevent us from selling our products within the EU/EEA/Switzerland territory. Significant revisions to some of the applicable regulations governing requirements for medical devices in the EU/EEA/Switzerland went into effect in March 2010. These revisions have introduced additional uncertainty into the marketing authorization process for medical devices in Europe. Until medical device manufacturers and European regulatory agencies, including Notified Bodies and “competent authorities,” have greater experience with interpreting and applying the revised regulations, we may be subject to risks associated with additional testing, modification, certification or amendment of our existing market authorizations, or we may be required to modify products already installed at our customers’ facilities in order to comply with the official interpretations of these revised regulations.

In addition, we are required to timely file various reports with international regulatory authorities, including reports required by international adverse event reporting regulations, that require that we report to regulatory authorities if our devices may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur. If these reports are not timely filed, regulators may impose sanctions and sales of our products may suffer, and we may be subject to product liability or regulatory enforcement actions, all of which could harm our business. Further, as we enter new businesses or pursue new business opportunities internationally, such as opportunities that require clinical trials, we may become subject to additional laws, rules and regulations. Becoming familiar with and implementing the infrastructure necessary to comply with these laws, rules and regulations could be quite costly. In addition, failure to comply with these laws, rules and regulations could delay the introduction of new products and could adversely affect our business.

Manufacturing and selling a device internationally. We are also subject to laws and regulations that apply to manufacturers of radiation emitting devices and products utilizing radioactive materials, as well as laws and regulations of general applicability relating to matters such as environmental protection, safe working conditions, manufacturing practices and other matters. These are often comparable to, if not more stringent than, the equivalent regulations in the United States. Sales overseas are also affected by regulation of matters such as product standards, packaging, labeling, environmental and product recycling requirements, import and export restrictions, tariffs, duties and taxes.

In some countries, we rely on our foreign distributors to assist us in complying with foreign regulatory requirements, and we cannot be sure that they will always do so. If we or any of our suppliers, distributors or customers fail to comply with applicable international regulatory requirements or are perceived to potentially have failed to comply, we may face:

- adverse publicity affecting both us and our customers;
- investigations by governmental authorities;
- fines, injunctions, civil penalties and criminal prosecutions;
- increased difficulty in obtaining required approvals in foreign countries;
- losses of clearances or approvals already granted;
- seizures or recalls of our products or those of our customers;
- delays in purchasing decisions by customers or cancellation of existing orders; and
- the inability to sell our products in or to import our products into such countries.
Other applicable international regulations. We are subject to laws and regulations in foreign countries covering data privacy and other protection of health and employee information. Particularly within the EU/EEA/Switzerland area, data protection legislation is comprehensive and complex and there has been a recent trend toward more stringent enforcement of requirements regarding protection and confidentiality of personal data. Data protection authorities from the different member states of the EU may interpret the legislation differently, which adds to this complexity, and data protection is a dynamic field where guidance is often revised. Fully understanding and implementing this legislation could be quite costly and timely, which could adversely affect our business. Additionally, in some instances, in order to fulfill the requirements of applicable U.S. law relating to data privacy, we may be faced with deciding whether to comply with EU/EEA/Switzerland data protection rules. Failure or partial failure to comply with data protection rules and regulations across the EU/EEA/Switzerland area could result in substantial monetary fines.

We are also subject to international “fraud and abuse” laws and regulations, as well as false claims and misleading advertisement laws. From time to time, these laws and regulations may be revised or interpreted in ways that could make it more difficult for our customers to conduct their businesses, which could have an adverse effect on the demand for our products, and therefore our business and results of operations. The laws and regulations and their enforcement are constantly undergoing change, and we cannot predict what effect, if any, changes to these laws and regulations may have on our business.

THE “AFFORDABLE HEALTHCARE FOR AMERICA ACT” INCLUDES PROVISIONS THAT MAY ADVERSELY AFFECT OUR BUSINESS AND RESULTS OF OPERATIONS, INCLUDING AN EXCISE TAX ON THE SALES OF MOST MEDICAL DEVICES

On March 23, 2010, President Obama signed into law the Affordable Health Care for America Act. While we are continuing to evaluate this legislation and its potential impact on our business, and many of its provisions are yet to be implemented, it may adversely affect the demand for our products and services, and therefore our financial position and results of operations, possibly materially.

Specifically, one of the components of the new law is a 2.3% excise tax on sales of most medical devices, which include our Oncology Systems products, starting in 2013. The Congressional Budget Office estimates that the total cost to the medical device industry could exceed $20 billion over ten years. This tax may put increased pressure on medical device manufacturers and purchasers, and may lead our customers to reduce their orders for products we produce or to request that we reduce the prices we charge for our products in order to offset the tax. Other elements of this new legislation, including comparative effectiveness research, an independent payment advisory board, payment system reforms (including shared savings pilots) and the reporting of certain payments by us to healthcare professionals and hospitals (the “Physician Payment Sunshine Act”), could meaningfully change the way healthcare is developed and delivered, and may materially impact numerous aspects of our business, including the demand and availability of our products, the reimbursement available for our products from governmental and third-party payors, and reduced medical procedure volumes.

Various healthcare reform proposals have also emerged at the state level, and we are unable to predict which, if any of these proposals will be enacted. We believe that the uncertainty created by healthcare reform in the United States has complicated our customers’ decision-making process and impacted our Oncology Systems business, and we expect that this uncertainty will persist until there is greater clarity on how the Affordable Health Care for America Act and state proposals will affect healthcare providers. We are unable to predict what effect ongoing uncertainty surrounding these matters will have on our customer’s purchasing decisions. However, an expansion in government’s role in the U.S. healthcare industry may adversely affect our business, possibly materially.
CHANGES TO RADIATION ONCOLOGY REIMBURSEMENTS MAY AFFECT DEMAND FOR OUR PRODUCTS

Sales of our healthcare products indirectly depend on whether adequate reimbursement is available to our customers from a variety of sources, such as government healthcare insurance programs, including the Medicare and Medicaid programs; private insurance plans; health maintenance organizations; and preferred provider organizations. In general, third-party payors in the United States are increasingly cost-conscious, and we cannot be sure that they will reimburse our customers at levels sufficient to enable us to achieve or maintain sales and price levels for our products in this market. Without adequate support from third-party payors, the market for our products may be limited. There is no uniform policy on reimbursement among third-party payors, nor can we be sure that procedures using our products will qualify for appropriate levels of reimbursement from third-party payors. Once Medicare has made a decision to provide reimbursement for a given treatment, these reimbursement rates are generally reviewed and adjusted by Medicare annually. Private third-party payors, although independent from Medicare, sometimes use portions of Medicare reimbursement policies and payment amounts in making their own reimbursement decisions. As a result, decisions by CMS to reimburse for a treatment, or changes to Medicare’s reimbursement policies or reductions in payment amounts with respect to a treatment sometimes extend to third-party payor reimbursement policies and amounts for that treatment. We have seen our customers’ decision-making process complicated by the uncertainty surrounding Medicare reimbursement rates for radiotherapy and radiosurgery in the United States. From time to time, CMS and third party payors may review and modify the factors upon which they rely to determine appropriate levels of reimbursement for cancer treatments. For example, CMS and third-party payors have begun to focus on the comparative effectiveness of radiation therapy versus other methods of cancer treatment, including surgery, and could modify reimbursement rates based on the results of comparative effectiveness studies. If comparative effectiveness studies are not available, or if available studies show that other cancer treatments are more effective than radiotherapy or radiosurgery, reimbursement rates for radiotherapy or radiosurgery could be reduced. Any significant cuts in reimbursement rates for radiotherapy, radiosurgery, proton therapy or brachytherapy, or concerns or proposals regarding further cuts, could further increase uncertainty, influence our customers’ decisions, reduce demand for our products, cause customers to cancel orders and have a material adverse effect on our revenues and stock price.

Foreign governments also have their own healthcare reimbursement systems and we cannot be sure that adequate reimbursement will be made available with respect to our products under any foreign reimbursement system.

OUR RESULTS MAY BE IMPACTED BY CHANGES IN FOREIGN CURRENCY EXCHANGE RATES

Because our business is global and payments are generally made in local currency, fluctuations in foreign currency exchange rates can impact our results by affecting product demand or our expenses and/or the profitability in U.S. dollars of products and services that we provide in foreign markets.

While we use hedging strategies to help offset the effect of fluctuations in foreign currency exchange rates, the protection these strategies provide is affected by the timing of transactions, and the effectiveness of those strategies, the number of transactions that are hedged, forecast volatility and the extent to which exchange rates change. If our hedging strategies do not offset these fluctuations, our revenues and other operating results may be harmed. In addition, movement in foreign currency exchange rates could impact our financial results positively or negatively in one period and not another, making it more difficult to compare our financial results from period to period. Furthermore, on July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). The Dodd-Frank Act contains provisions which may impact our existing hedging strategies, but we cannot predict those effects at this time.
In addition, long-term movements in foreign currency exchange rates can also affect the competitiveness of our products in the local currencies of our international customers. Even though our international sales are mostly in local currencies, our cost structure is weighted towards the U.S. dollar. The volatility of the U.S. dollar that we have experienced over the last several years has affected the competitiveness of our pricing against our foreign competitors, some of which may have cost structures based in other currencies, either helping or hindering our international order and revenue growth, thereby affecting our overall financial performance and results. Changes in monetary or other policies here and abroad, including as a result of economic instability or concerns about the downgrade and levels of sovereign debt, or in reaction thereto, would also likely affect foreign currency exchange rates.

WE ARE SUBJECT TO FEDERAL, STATE AND FOREIGN LAWS GOVERNING OUR BUSINESS PRACTICES WHICH, IF VIOLATED, COULD RESULT IN SUBSTANTIAL PENALTIES. ADDITIONALLY, CHALLENGES TO OR INVESTIGATION INTO OUR PRACTICES COULD CAUSE ADVERSE PUBLICITY AND BE COSTLY TO RESPOND TO AND THUS COULD HARM OUR BUSINESS

Laws and ethical rules governing interactions with healthcare providers. The Medicare and Medicaid “anti-kickback” laws, and similar state laws, prohibit payments or other remuneration that is intended to induce hospitals, physicians or others either to refer patients or to purchase, lease or order, or arrange for or recommend the purchase, lease or order of healthcare products or services for which payment may be made under federal and state healthcare programs, such as Medicare and Medicaid. These laws affect our sales, marketing and other promotional activities by limiting the kinds of financial arrangements we may have with hospitals, physicians or other potential purchasers of our products. They particularly impact how we structure our sales offerings, including discount and rebate practices, customer support, education and training programs, physician consulting, research grants and other service arrangements. These laws are broadly written, and it is often difficult to determine precisely how these laws will be applied to specific circumstances.

Federal and state “false claims” laws generally prohibit knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid or other government payors that are false or fraudulent, or for items or services that were not provided as claimed. Although we do not submit claims directly to payors, manufacturers can be, and have been, held liable under these laws if they are deemed to “cause” the submission of false or fraudulent claims by providing inaccurate billing or coding information to customers, or through certain other activities, including promoting products for uses not approved or cleared by the FDA, which is called off-label promotion. Violating “anti-kickback” and “false claims” laws can result in civil and criminal penalties, which can be substantial, and potential mandatory or discretionary exclusion from healthcare programs for noncompliance. Even an unsuccessful challenge or investigation into our practices could cause adverse publicity, and be costly to defend, and thus could harm our business and results of operations. Additionally, several recently enacted state and federal laws, including the laws in Massachusetts and Vermont, and the federal Physician Payment Sunshine Act, now require, among other things, extensive tracking and maintenance of databases regarding the disclosure of relationships and payments to physicians, healthcare providers and hospitals. These laws require us to implement the necessary and costly infrastructure to track and report certain payments to healthcare providers. Failure to comply with these new tracking and reporting laws could subject us to significant civil monetary penalties.

We are subject to similar laws in foreign countries where we conduct business. For example, within the EU, the control of unlawful marketing activities is a matter of national law in each of the member states. The member states of the EU closely monitor perceived unlawful marketing activity by companies. We could face civil, criminal and administrative sanctions if any member state determines that we have breached our obligations under its national laws. Industry associations also closely monitor the activities of member companies. If these organizations or authorities name us as having breached our obligations under their regulations, rules or standards, our reputation would suffer and our business and financial condition could be adversely affected.
Anti-corruption laws and regulations. We are also subject to the U.S. Foreign Corrupt Practices Act and anti-corruption laws, and similar laws in foreign countries, such as the U.K. Bribery Act of 2010, which became effective on July 1, 2011. In general, there is a worldwide trend to strengthen anticorruption laws and their enforcement. Any violation of these laws could create a substantial liability for us, subject our officers and directors to personal liability and also cause a loss of reputation in the market. Transparency International’s 2010 Corruption Perceptions Index measured the degree to which public sector corruption is perceived to exist in 178 countries around the world, and found that nearly three quarters of the countries in the index, including many that we consider to be high growth areas for our products, such as China, India, Russia and Brazil, scored below five, on a scale from 10 (very clean) to 0 (highly corrupt). We currently operate in many countries where the public sector is perceived as being more or highly corrupt. Our strategic business plans include expanding our business in regions and countries that are rated as higher risk for corruption activity by Transparency International. Becoming familiar with and implementing the infrastructure necessary to comply with laws, rules and regulations applicable to new business activities and mitigate and protect against corruption risks could be quite costly. In addition, failure to comply with these laws, rules and regulations could delay our expansion into high-growth markets and could adversely affect our business. This notwithstanding, we will inevitably do more business in countries where the public sector is perceived to be more or highly corrupt and be engaging in business in more countries perceived to be more or highly corrupt. Increased business in higher risk countries could subject us and our officers and directors to increased scrutiny and increased liability. In addition, from time to time, we may conduct internal investigations or face audits or investigations by one or more domestic or foreign government agencies, which could be costly and time-consuming, and could divert our management and key personnel from our business operations. An adverse outcome under any such investigation or audit could subject us to fines or criminal or other penalties, which could adversely affect our business and financial results.

PRODUCT DEFECTS OR MISUSE MAY RESULT IN MATERIAL PRODUCT LIABILITY OR PROFESSIONAL ERRORS AND OMISSIONS CLAIMS, LITIGATION, INVESTIGATION BY REGULATORY AUTHORITIES OR PRODUCT RECALLS THAT COULD HARM FUTURE REVENUES AND REQUIRE US TO PAY MATERIAL UNINSURED CLAIMS

Our business exposes us to potential product liability claims that are inherent in the manufacture, sale, installation, servicing and support of medical devices and other devices that deliver radiation. Because our products are involved in the intentional delivery of radiation to the human body, other situations where people may come in contact with radiation (for example, when our SIP products are being used to scan cargo), the collection and storage of patient treatment data for medical analysis and treatment delivery, the planning of radiation treatment and diagnostic imaging of the human body, and the diagnosing of medical problems, the possibility for significant injury and/or death exists. Our medical products operate within our customers’ facilities and network systems, and under quality assurance procedures established by the facility that ultimately result in the delivery of radiation to patients. Human and other errors or accidents may arise from the operation of our products in complex environments, particularly with products from other vendors, where interoperability or data sharing protocol may not be optimized even though the equipment or system operates according to specifications. As a result, we may face substantial liability to patients, our customers and others for damages resulting from the faulty, or allegedly faulty, design, manufacture, installation, servicing, support, testing or interoperability of our products with other products, or their misuse or failure, as well as liability related to the loss or misuse of private patient data. We may also be subject to claims for property damages or economic loss related to or resulting from any errors or defects in our products, or the installation, servicing and support of our products. Any accident or mistreatment could subject us to legal costs, litigation, adverse publicity and damage to our reputation, whether or not our products or services were a factor. Litigation and other legal proceedings can be costly and can divert management’s time and resources. An unfavorable outcome in litigation or proceedings against us could adversely
affect our financial results. Adverse publicity regarding any accidents or mistreatments, even ones that do not involve our products, could cause patients to be less receptive to radiotherapy treatments, causing them to question the efficacy of radiation therapy and seek other methods of treatment and adversely impacting our business. Adverse publicity could also result in additional regulation of radiation therapy, medical devices or the healthcare industry in general. Increased regulatory activities could adversely affect our ability to promote, manufacture and sell our products, and therefore negatively impact our business and results of operations.

In addition, if a product we design or manufacture were defective (whether due to design, labeling or manufacturing defects, improper use of the product or other reasons), we may be required to correct or recall the product and notify regulatory authorities. The adverse publicity resulting from a correction or recall could damage our reputation and cause customers to review and potentially terminate their relationships with us. A product correction or recall could consume management time and have an adverse financial impact on our business, including incurring substantial costs, losing revenues and accruing losses under accounting principles generally accepted in the United States (“GAAP”).

We maintain limited product liability insurance coverage and currently self-insure professional liability/errors and omissions liability. Our product liability insurance policies are expensive and have high deductible amounts and self-insured retentions. Our insurance coverage may also prove to be inadequate, and future policies may not be available on acceptable terms or in sufficient amounts, if at all. If a material claim is successfully brought against us relating to a self-insured liability or a liability that is in excess of our insurance coverage, or for which insurance coverage is denied or limited, we could have to pay substantial damages, which could have a material adverse effect on our financial position and results of operation.

WE COMPETE IN HIGHLY COMPETITIVE MARKETS, AND WE MAY LOSE MARKET SHARE TO COMPANIES WITH GREATER RESOURCES OR THE ABILITY TO DEVELOP MORE EFFECTIVE TECHNOLOGIES, OR WE COULD BE FORCED TO REDUCE OUR PRICES

Rapidly evolving technology, intense competition and pricing pressure characterize the markets for radiation therapy equipment and software. Some of our competitors have greater financial, marketing and other resources than we have. Also, we believe that new competitors will enter our markets, as we have encountered new competitors as we have entered new markets such as radiosurgery, volumetric modulated arc therapy and proton therapy. To compete successfully, we must provide technically superior, clinically proven products that deliver more precise, cost-effective, high quality clinical outcomes, in a complete package of products and services, and to do so ahead of our competitors. As our Oncology Systems products are generally sold on a basis of total value to the customer, our business may suffer when purchase decisions are based solely upon price, which can happen if hospitals and clinics give purchasing decision authority to group purchasing organizations. In addition, additional competitors may delay customer purchasing decisions as customers evaluate the products of these competitors along with ours, potentially extending our sales cycle and adversely affecting our net orders.

In x-ray imaging components and subsystems, we also often compete with companies that have greater financial, marketing and other resources than we have. Some of the major diagnostic imaging systems companies, which are the primary OEM customers for our x-ray components, also manufacture x-ray components, including x-ray tubes, for use in their own imaging systems products. We must compete with these in-house manufacturing operations for business from their affiliated companies. In addition, we compete against other stand-alone, independent x-ray tube manufacturers who compete with us for both the OEM business of major diagnostic imaging equipment manufacturers and the independent servicing business for x-ray tubes. The market for flat panel detectors is also very competitive. As a result, we must have a competitive advantage in one or more significant areas, which may include lower product cost, better product quality and/or superior technology and/or performance.
In our SIP business, we compete with other OEM suppliers, primarily outside of the United States. The market for our SIP products used for nondestructive testing in industrial applications is small and highly fragmented.

The market for proton therapy products is still developing and is characterized by rapidly evolving technology, high competition and pricing pressure. Our ability to compete successfully depends, in part, our ability to lower our product costs, develop and provide technically superior, clinically proven products that deliver more precise, cost-effective, high quality clinical outcomes, including integration of technologies such as OBI for IGRT and motion management technologies such as respiratory gating and Calypso.

In each of our business segments, existing competitors’ actions and new entrants may adversely affect our ability to compete. These competitors could develop technologies and products that are more effective than those we currently use or produce or that could render our products obsolete or noncompetitive. In addition, the timing of our competitors’ introduction of products into the market could affect the market acceptance and market share of our products. Some competitors offer specialized products that provide, or may be perceived by customers to provide, a marketing advantage over our mainstream cancer treatment products. Also, some of our competitors may not be subject to the same standards, regulatory and/or other legal requirements that we are, and therefore, they could have a competitive advantage in developing, manufacturing and marketing products and services. Any inability to develop, gain regulatory approval for and supply commercial quantities of competitive products to the market as quickly and effectively as our competitors could limit market acceptance of our products and reduce our sales. In addition, some of our smaller competitors could be acquired by larger companies that have greater financial strength, which could enable them to compete more aggressively. Our competitors could also acquire some of our suppliers or distributors, which could disrupt these supply or distribution arrangements and result in less predictable and reduced revenues in our businesses. Any of these competitive factors could negatively affect our pricing, sales, revenues, market share and gross margins and our ability to maintain or increase our operating margins.

OPEN ARCHITECTURE IS BECOMING INCREASINGLY IMPORTANT, AND SALES OF OUR PRODUCTS COULD FALL IF WE FAIL TO ACHIEVE THIS

As radiation oncology treatment becomes more complex, our customers are increasingly focusing on ease-of-use and interconnectivity. Our equipment and software are highly sophisticated and require a high level of training and education to use them competently and safely, requirements made even more important because they work together within integrated environments. We have directed substantial product development efforts into (i) increasing the interconnectivity of our products for more seamless operation within a system, (ii) enhancing the ease of use of our software products and (iii) reducing setup and treatment times and increasing patient throughput. We have emphasized maintaining an “open systems” approach that allows customers to “mix and match” our various individual products, incorporate products from other manufacturers, share information with other systems or products and use the equipment for offering various methods of radiation therapy treatment. We have done this based on our belief that such interconnectivity will increase the acceptance and adoption of IMRT, IGRT and volumetric modulated arc therapy and will stimulate demand for our products. There are competitive “closed-ended” dedicated-use systems, however, that place simplicity of use ahead of flexibility. If we have misjudged the importance to our customers of maintaining an “open systems” approach, or if we are unsuccessful in our efforts to increase interconnectivity, enhance ease-of-use and reduce setup and treatment times, our revenues could suffer.

Obtaining and maintaining interoperability and compatibility can be costly and time-consuming. While we try to use standard published protocols for communication with widely used radiation oncology products manufactured by other companies, if this cannot be done, we may need to develop individual interfaces so that our products communicate correctly. When other companies modify the design or
functionality of their products, this may affect their compatibility with our products. When we implement design improvements to our products, customers may be reluctant to adopt our new technology due to interoperability issues. For example, a clinic may be unwilling to implement one of our new technologies because its third-party software does not yet communicate correctly with our new product. Our ability to obtain compatibility with products of other companies may depend on our ability to obtain adequate information from them regarding their products. In many cases, these third parties are our competitors and may schedule their product changes and delay their release of relevant information to us to place us at a competitive disadvantage. When we modify our products to make them interoperable or compatible with third-party products, we may be required to obtain additional regulatory clearances. This process is costly and could delay our ability to release our products for commercial use. It is also possible that, despite our best efforts, we may not be able to make our products interoperable or compatible with widely used third-party products or may only be able to do so at a prohibitive expense, making our products less attractive or more costly to our customers.

**PROTECTING OUR INTELLECTUAL PROPERTY CAN BE COSTLY AND WE MAY NOT BE ABLE TO MAINTAIN LICENSED RIGHTS, AND IN EITHER CASE OUR COMPETITIVE POSITION WOULD BE HARMED IF WE ARE NOT ABLE TO DO SO**

We file applications as appropriate for patents covering new products and manufacturing processes. We cannot be sure, however, that our current patents, the claims allowed under our current patents, or patents for technologies licensed to us will be sufficiently broad to protect our technology position against competitors. Issued patents owned by, or licensed to, us may be challenged, invalidated or circumvented, or the rights granted under the patents may not provide us with competitive advantages. We also cannot be sure that patents will be issued from any of our pending or future patent applications. Asserting our patent rights against others in litigation or other legal proceedings is costly and diverts managerial resources. An unfavorable outcome in any such litigation or proceeding could harm us. In addition, we may not be able to detect patent infringement by others or may lose our competitive position in the market before we are able to do so.

We also rely on a combination of copyright, trade secret and other laws, and contractual restrictions on disclosure, copying and transferring title (including confidentiality agreements with vendors, strategic partners, co-developers, employees, consultants and other third parties), to protect our proprietary rights. These protections may prove inadequate, since agreements may still be breached and we may not have adequate remedies for a breach, and our trade secrets may otherwise become known to or be independently developed by others. We have trademarks, both registered and unregistered, that are maintained and enforced to provide customer recognition for our products in the marketplace, but unauthorized third parties may still use them. We also have agreements with third parties that license to us certain patented or proprietary technologies. In some cases products with substantial revenues may depend on these license rights. If we were to lose the rights to license these technologies, or our costs to license these technologies were to materially increase, our business would suffer.

**THIRD PARTIES MAY CLAIM WE ARE INFRINGING THEIR INTELLECTUAL PROPERTY, AND WE COULD SUFFER SIGNIFICANT LITIGATION OR LICENSING EXPENSES OR BE PREVENTED FROM SELLING OUR PRODUCTS**

The industries in which we compete are characterized by a substantial amount of litigation over patent and other intellectual property rights. Our competitors, like companies in many high technology businesses, continually review other companies’ activities for possible conflicts with their own intellectual property rights. In addition, non-practicing entities may review our activities for conflicts with their patent rights. Determining whether a product infringes a third party’s intellectual property rights involves complex legal and factual issues, and the outcome of this type of litigation is often uncertain. Third parties may claim that we are infringing their intellectual property rights, and we may be found to infringe those intellectual property rights. We may not be aware of intellectual property rights of others.
that relate to our products, services or technologies. From time to time, we have received notices from third parties asserting infringement and we have been subject to lawsuits alleging infringement of third-party patent or other intellectual property rights. Any dispute regarding patents or other intellectual property could be costly and time-consuming, and could divert our management and key personnel from our business operations, and we may not prevail in a dispute. We do not maintain insurance for intellectual property infringement, so costs of defense, whether or not we are successful in defending an infringement claim, will be borne by us and could be significant. If we are unsuccessful in defending an infringement claim, we may be subject to significant damages. We may also be subject to injunctions against development and sale of our products, which could be material. If a third party rights holder is willing to license rights, we may be required to enter into costly royalty or license agreements.

THE LOSS OF A SUPPLIER OR ANY INABILITY TO OBTAIN SUPPLIES OF IMPORTANT COMPONENTS COULD RESTRICT OUR ABILITY TO MANUFACTURE PRODUCTS, CAUSE DELAYS IN OUR ABILITY TO DELIVER PRODUCTS, OR SIGNIFICANTLY INCREASE OUR COSTS

We obtain some of the components included in our products from a limited group of suppliers or from a single-source supplier, such as the radioactive sources for high dose afterloaders, klystrons for linear accelerators; transistor arrays and cesium iodide coatings for flat panel detectors, and specialized integrated circuits, x-ray tube targets, housings, glassframes and various other x-ray tube components; and radiofrequency components, magnets and gantry hardware for proton therapy systems. If we lose any of these suppliers or if their operations were substantially interrupted, we would be required to obtain and qualify one or more replacement suppliers, which may then also require us to redesign or modify our products to incorporate new parts and/or further require us to obtain clearance, qualification or certification of such product by the FDA or other applicable regulatory approvals in other countries. Events like these could significantly increase costs for the affected product and likely cause material delays in delivery of that and other related products. Although we have insurance to protect against business interruption loss, this insurance coverage may not be adequate or continue to remain available on acceptable terms, if at all. Additionally, some of our single-source suppliers supply components for certain of our rapidly growing product lines. Manufacturing capacity limitations of any of our suppliers or other inability of these suppliers to meet increasing demand could adversely affect us, resulting in curtailed growth opportunities for any of our product lines. Shortage of, and greater demand for, components and subassemblies could also increase manufacturing costs by increasing prices. Disruptions or loss of any of our limited- or sole-source components or subassemblies or the capacity limitations of the suppliers for these components or subassemblies, including the ones referenced above, could adversely affect our business and financial results and could damage our customer relationships.

A SHORTAGE OF RAW MATERIALS COULD RESTRICT OUR ABILITY TO MANUFACTURE PRODUCTS, CAUSE DELAYS, OR SIGNIFICANTLY INCREASE OUR COST OF GOODS

We rely upon the supplies of certain raw materials such as tungsten, lead and copper for Oncology Systems and SIP; copper, lead, tungsten, rhenium, molybdenum zirconium, and various high grades of steel alloy for x-ray tubes, and high-grade steel, high-grade copper and iron for VPT. Demand for these raw materials both within the United States and from foreign countries, such as China, has increased over the last few years, resulting in limited supplies and higher prices. Worldwide demand, availability and pricing of these raw materials have been volatile, and we expect that availability and pricing will continue to fluctuate in the future. If supplies are restricted and prices increase, this could constrain our manufacturing of affected products, reduce our profit margins or otherwise adversely affect our business.
CONSOLIDATION AMONG OUR ONCOLOGY SYSTEMS CUSTOMERS COULD ADVERSELY AFFECT OUR SALES OF ONCOLOGY PRODUCTS

We have seen and may continue to see some consolidation among our customers in our Oncology Systems business, as hospitals and clinics combine through mergers and acquisitions, and as they join group purchasing organizations or affiliated enterprises. As customers consolidate, the volume of product sales to these customers might decrease. Alternatively, order size may increase as what were previously more than one customer combine orders as one entity. As a result, the purchasing cycle for our Oncology Systems products could lengthen, as orders increase in size and require more customer approvals. Both increased order size and extended purchasing cycles could cause our net orders to be more volatile and less predictable. In addition, group purchasing organizations often focus on pricing as the determinant in making purchase decisions. A reduction in net orders could affect the level of future revenues, which would adversely affect our operating results, financial condition, and the price of VMS common stock.

WE SELL OUR X-RAY PRODUCTS TO A LIMITED NUMBER OF OEM CUSTOMERS, MANY OF WHICH ARE ALSO OUR COMPETITORS, AND A REDUCTION IN BUSINESS OR INABILITY TO PROPERLY FORECAST SALES BY ONE OR MORE OF THESE CUSTOMERS COULD REDUCE OUR SALES

We sell our x-ray tube products to a limited number of OEM customers, many of which are also our competitors with in-house x-ray tube manufacturing operations. If these customers manufacture a greater percentage of their components in-house or otherwise lower external sourcing costs, we could experience the loss of, or reduction in purchasing volume by, one or more of these customers. Such a loss or reduction could have a material adverse effect on our X-ray Products business. In addition, economic concerns, such as concerns over a sluggish economic recovery, levels of sovereign debt or restrictions in government spending, as well as the effects of natural disasters (such as power outages and facility closures), have made it difficult for our OEM customers to accurately forecast and plan future business activities, and our x-ray business has in the past been impacted by inventory reduction efforts and a slowdown in sales at some of these customers. Our agreements for x-ray components may contain purchasing estimates that are based on our customers’ historical purchasing patterns, and actual purchasing volumes under the agreements may vary significantly from our estimates.

ORDERS FOR OUR SECURITY AND INSPECTION PRODUCTS COULD BE UNPREDICTABLE

Our SIP business designs, manufactures, sells and services Linatron x-ray accelerators, imaging processing software and image detection products for security and inspection, such as cargo screening at ports and borders and nondestructive examination for a variety of applications. We generally sell SIP products to OEMs who incorporate our products into their inspection systems, which are then sold to customs and other government agencies, as well as to commercial organizations in the casting, power, aerospace, chemical, petro-chemical and automotive industries. We believe growth in the SIP business will be driven by security cargo screening and border protection needs, as well as by the needs of customs agencies to verify shipments for assessing duties and taxes. However, use of linear accelerator and imaging technology in security cargo screening and border protection is in its early stages. Orders for our SIP products have been and may continue to be unpredictable as governmental agencies may place large orders with us or our OEM customers in a short time period, and then may not place any orders for a long time period thereafter. Because it is difficult to predict our OEM customer delivery and acceptance schedules, the actual timing of sales and revenue recognition will vary significantly.

In addition, our SIP business is heavily influenced by U.S. and foreign governmental policies on national and homeland security, border protection and customs revenue activities, which depend upon government budgets and appropriations that are subject to political changes. We have seen customers
freeze or dramatically reduce purchases and capital project expenditures, delay projects, or act cautiously as governments around the world wrestle with spending priorities. As economic recovery remains sluggish and concerns about levels of government employment and government debt continue, we expect that these effects will also continue. Furthermore, bid awards in this business may be subject to challenge by third parties, as we have previously encountered with a large government project, which can make the certainty and timing of some SIP orders unpredictable. As a result, this business is subject to unpredictability in the timing of orders, sales and revenue that could cause volatility in our revenues and earnings, and therefore the price of VMS common stock.

IF WE ARE UNABLE TO PROVIDE THE SIGNIFICANT EDUCATION AND TRAINING REQUIRED FOR THE HEALTHCARE MARKET TO ACCEPT OUR PRODUCTS, OUR BUSINESS WILL SUFFER

In order to achieve market acceptance for our radiation therapy products, we often need to educate physicians about the use of a new treatment procedure such as IMRT, IGRT, volumetric modulated arc therapy, stereotactic radiotherapy, SRS, SBRT or proton therapy, overcome physician objections to some of the effects of the product or its related treatment regimen, convince healthcare payors that the benefits of the product and its related treatment process outweigh its costs and help train qualified physicists in the skilled use of our products. For example, the complexity and dynamic nature of IMRT and IGRT requires significant education of hospital personnel and physicians regarding the benefits of and practices associated with IMRT and IGRT. Further, the complexity and high cost of proton therapy requires similar significant education, as well as education regarding construction and facility requirements. We have expended and will continue to expend significant resources on marketing and educational efforts to create awareness of IMRT, IGRT, volumetric modulated arc therapy, stereotactic radiotherapy, SRS, SBRT and proton therapy generally; to encourage the acceptance and adoption of our products for these technologies; and to promote the safe use of our products in compliance with their operating procedures. Future products may not gain significant market acceptance among physicians, patients and healthcare payors, even if we spend significant time and expense on their education.

OUR BUSINESS MAY SUFFER IF WE ARE NOT ABLE TO HIRE AND RETAIN QUALIFIED PERSONNEL

Our future success depends, to a significant extent, on our ability to attract, expand, integrate, train and retain our management team, qualified engineering personnel, and service, sales, marketing and other qualified staff. We compete for key personnel with other medical equipment and software manufacturers and technology companies, as well as universities and research institutions. Because this competition is intense, compensation-related costs could increase significantly if the supply of qualified personnel decreases or demand increases. If we are unable to hire, train or retain qualified personnel, we will not be able to maintain and expand our business, and our business would suffer.

IF WE ARE NOT ABLE TO MATCH OUR MANUFACTURING CAPACITY WITH DEMAND FOR OUR PRODUCTS, OUR FINANCIAL RESULTS MAY SUFFER

Our products have a long production cycle and we need to anticipate demand for our products in order to ensure adequate manufacturing or testing capacity. If we are unable to anticipate demand and our manufacturing or testing capacity does not keep pace with product demand, we will not be able to fulfill orders timely, which may negatively impact our financial results and overall business. Conversely, if demand for our products decreases, the fixed costs associated with excess manufacturing capacity may harm our financial results.
IF WE FAIL TO SUCCESSFULLY ACQUIRE OR INTEGRATE NEW BUSINESSES, PRODUCTS AND TECHNOLOGY, WE MAY NOT REALIZE EXPECTED BENEFITS OR MAY HARM OUR BUSINESS

We need to grow our businesses in response to changing technologies, customer demands and competitive pressures. In some circumstances, we may decide to grow our business through the acquisition of complementary businesses, products or technologies rather than through internal development. For example, in March 2011 we acquired all of the outstanding equity of a privately-held supplier of devices for delivery of brachytherapy treatment of cancer and in October 2011 acquired Calypso. Identifying suitable acquisition candidates can be difficult, time-consuming and costly, and we may not be able to identify suitable candidates or successfully complete identified acquisitions. In addition, completing an acquisition can divert our management and key personnel from our business operations, which could harm our business and affect our financial results. Even if we complete an acquisition, we may not be able to successfully integrate newly acquired organizations, products, technologies or employees into our operations, or may not fully realize some of the expected synergies.

Integrating an acquisition can also be expensive and time-consuming, and may strain our resources. It may cost us more to commercialize new products than we originally anticipated, as we are experiencing with our proton therapy systems, which could impact our results of operations. In many instances, integrating a new business will also involve implementing or improving internal controls appropriate for a public company at a business that lacks them. In addition, we may be unable to retain the employees of acquired companies, or the acquired company’s customers, suppliers, distributors or other partners for a variety of reasons, including the fact that these entities may be our competitors or may have close relationships with our competitors.

Further, we may find that we need to restructure or divest acquired businesses, or assets of those businesses. Even if we do so, an acquisition may not produce the full efficiencies, growth or benefits we expected. If we decide to sell assets or a business, as we did in fiscal year 2008 with Research Instruments, it may be difficult to identify buyers or alternative exit strategies on acceptable terms, in a timely manner, or at all, which could delay the accomplishment of our strategic objectives. Additionally, we may be required to dispose of a business at a lower price or on less advantageous terms, or to recognize greater losses, than we had anticipated.

We account for our acquisitions under the purchase method of accounting. Under this method, we allocate the total purchase price to the acquired businesses’ tangible assets and liabilities, identifiable intangible assets and in-process research and development costs based on their fair values as of the date of the acquisition, and record the excess of the purchase price over those fair values as goodwill. If we fail to achieve the anticipated growth from an acquisition, or if we decide to sell assets or a business, we may be required to recognize an impairment loss on the write down of our assets and goodwill, which could adversely affect our financial results. In addition, acquisitions can result in potentially dilutive issuances of equity securities or the incurrence of debt, contingent liabilities or expenses, or other charges, any of which could harm our business and affect our financial results.

WE MAY FACE ADDITIONAL RISKS FROM THE ACQUISITION OR DEVELOPMENT OF NEW LINES OF BUSINESS

From time to time, we may acquire or develop new lines of business, such as proton therapy. There are substantial risks and uncertainties associated with this, particularly in instances where the markets are not fully developed. Risks include developing knowledge of and experience in the new business, recruiting market professionals, increasing research and development expenditures, and developing and capitalizing on new relationships with experienced market participants. This may mean significant investment and involvement of our senior management to acquire or develop, then integrate, the business into our operations. Timelines for integration of new businesses may not be achieved and price and profitability targets may not prove feasible, as new products can carry lower gross margins than
existing products. External factors, such as compliance with regulations, competitive alternatives, and shifting market preferences, may also impact whether implementation of a new business will be successful. Failure to manage these risks in the development and implementation of new businesses successfully could materially and adversely affect our business, results of operations and financial condition.

**WE WORK WITH DISTRIBUTORS FOR SALES IN SOME TERRITORIES, AND LOSING THEM COULD HARM OUR REVENUES IN THAT TERRITORY**

We have strategic relationships with a number of key distributors for sales and service of our products, principally in Europe and Asia. If these strategic relationships end and are not replaced, our revenues from product sales in these territories and/or ability to service our products in the territories serviced by these distributors could be adversely affected.

**FLUCTUATIONS IN OUR OPERATING RESULTS, INCLUDING QUARTERLY NET ORDERS, REVENUES, AND MARGINS, MAY CAUSE OUR STOCK PRICE TO BE VOLATILE, WHICH COULD CAUSE LOSSES FOR OUR STOCKHOLDERS**

We have experienced and expect in the future to experience fluctuations in our operating results, including net orders, revenues and margins. Drivers of orders include timing of announcement of and introduction of new products or product enhancements by us and our competitors, as well as changes or anticipated changes in third party reimbursement amounts or policies applicable to treatments using our products. The availability of economic stimulus packages or other government funding may also affect timing of customer purchases. Many of our products require significant capital expenditures by our customers. Accordingly, individual product orders can be quite large in dollar amounts, which can extend the customer purchasing cycle. We have experienced this with our IGRT products, and expect this to be even greater with our proton therapy products because of the high cost of the equipment and the complexity of project financing. In addition, the budgeting cycles of hospitals and clinics for capital equipment purchases are frequently fixed well in advance. As a result of the sluggish recovery from the 2008 worldwide economic downturn and contraction in credit markets, as well as continued uncertainty regarding global economic conditions, the purchasing cycle has extended and may extend even further as potential customers more closely scrutinize and prioritize their capital spending budgets, and analyze appropriate financing alternatives. In addition, some of our more sophisticated equipment, such as IGRT and proton therapy products, requires greater site preparation and longer construction cycles, which can delay customer decision cycles even further. The timing of when individual orders are placed, installation is accomplished and the revenues recognized affect our quarterly results.

Once orders are received, factors that may affect whether these orders become revenues and the timing of revenue include:

- delay in shipment due, for example, to unanticipated construction delays at customer locations where our products are to be installed, cancellations or rescheduling by customers, extreme weather conditions, natural disasters or port strikes;
- delay in the installation and/or acceptance of a product;
- for proton therapy systems, failure to satisfy contingencies associated with an order;
- the method of accounting used to recognize revenue;
- a change in a customer’s financial condition or ability to obtain financing; or
- timing of appropriate regulatory approvals or authorizations.
Our quarterly operating results, including our margins, may also be affected by a number of other factors, including:

- changes in our or our competitors’ pricing or discount levels;
- changes in foreign currency exchange rates;
- changes in the relative portion of our revenues represented by our various products, including the relative mix between higher margin and lower margin products;
- changes in the relative portion of our revenues represented by the international region;
- fluctuation in our effective tax rate, which may or may not be known to us in advance;
- disruptions in the supply or changes in the costs of raw materials, labor, product components or transportation services;
- disruptions in our operations, including our ability to manufacture products, caused by events such as earthquakes, fires, floods, terrorist attacks or the outbreak of epidemic diseases;
- the impact of changing levels of sales on sole purchasers of certain of our x-ray products;
- the unfavorable outcome of any litigation or administrative proceeding or inquiry; and
- accounting changes and adoption of new accounting pronouncements.

Because many of our operating expenses are based on anticipated capacity levels and a high percentage of these expenses are fixed for the short term, a small variation in the timing of revenue recognition can cause significant variations in operating results from quarter to quarter. Our overall gross margin may also be impacted by the gross margin of our proton therapy products, which are presently below the gross margins for our traditional radiotherapy products. If our gross margins fall below the expectation of securities analysts and investors, the trading price of VMS common stock would almost certainly decline.

We report on a quarterly and annual basis our net orders and backlog. It is important to understand that, unlike revenues, net orders and backlog are not governed by GAAP, and are not within the scope of the audit or reviews conducted by our independent registered public accounting firm; therefore, investors should not interpret our net orders or backlog in such a manner. Also, for the reasons set forth above, our net orders and backlog cannot necessarily be relied upon as accurate predictors of future revenues. High levels of order cancellation or delays in customer purchase decisions or delivery dates will reduce the quarterly net orders and backlog and also affect the level of future revenues. Accordingly, we cannot be sure if or when orders will mature into revenues. Our net orders, backlog, revenues and net earnings in one or more future periods may fall below the expectations of securities analysts and investors. In that event, the trading price of VMS common stock would almost certainly decline.

THE FINANCIAL RESULTS OF OUR VARIAN PARTICLE THERAPY BUSINESS MAY FLUCTUATE AND BE UNPREDICTABLE

The development of the business we now call VPT enables us to offer products for delivering image-guided, intensity-modulated proton therapy for the treatment of cancer. Our success in this area will depend upon the wide-spread awareness, acceptance and adoption by the oncology market of proton therapy systems for the treatment of cancer. However, this technology has not been and future developments may not be accepted as quickly as others.

Since proton therapy projects are highly customized and are generally large and more complex, planning for these projects will take more time and use more resources than those in the radiotherapy business conducted in our Oncology Systems segment. Due to its relatively large scale, the construction of a proton therapy facility requires significant capital investment and may involve complex project financing.
Consequently, this business is vulnerable to general economic and market conditions. The worldwide economic downturn resulted in a contraction in credit markets. This has made and may continue to make it more difficult for potential customers of this business to find appropriate financing for large proton therapy projects, which could cause them to delay or cancel their projects, or request that we participate in financing arrangements (such as we recently did for the Scripps Proton Therapy Center) or payment concessions in their agreements with us, which could impact our operating results. In addition, due to their size and complexity, the sales and customer decision cycles for proton therapy projects may take several years. As a result, the timing of these projects, and therefore our operating results for this business, may vary significantly from period to period.

We expect that a limited number of customers will account for a substantial portion of VPT’s business for the foreseeable future. Because an order for a proton therapy system can be relatively large, an order in one fiscal period will cause our net orders to vary significantly, making comparisons between fiscal periods more difficult. Further, the award of a proton therapy system order may be subject to challenge by third parties, which can make these orders more unpredictable than other products. If a customer cancels an order for a proton therapy system, such as occurred with the order for a proton therapy system for Skandion Kliniken in Sweden, it would negatively impact our orders in the fiscal period in which the order is cancelled and we would lose the opportunity for the product and services revenues that the order represents.

In addition, many of the components used in proton therapy equipment require a long lead time, which may require an increase in our levels of inventory. This may cause fluctuations in the operating results of VPT that may make it difficult to predict our results and to compare our results from period to period.

Moreover, entrance into the proton therapy business may subject us to increased risk and potential liability. For example, because proton therapy projects are large in scale and require detailed project planning, failure to deliver on our commitments could result in greater than expected liabilities, as we could be required to indemnify business partners and customers for losses suffered or incurred if we are unable to deliver our products in accordance with the terms of customer contracts. Additionally, customers are requesting that the systems vendor, as the primary technology provider, provide guarantees for and suffer penalties in relation to the overall construction project, as well as in some situations participate in or provide project financing for the project. Providing financing for one or more proton therapy centers, such as the Scripps Proton Therapy Center, could adversely affect our financial results, since we cannot provide any assurance that a center will be completed on time or within budget, that the center can or will generate sufficient patient volumes and revenues to support scheduled loan payments or to provide incremental revenue to us, that a loan commitment may be syndicated to third parties or refinanced at maturity, or that the borrower will have the financial means to pay off any financing at maturity. If a borrower does not have the financial means to pay off its debts and if we cannot recover our investment from the sale of any collateral, we may be required to write off the debt investment, which would adversely affect our financial results. If we must establish special purpose entities to finance and manage a proton therapy project, we may be required to consolidate these special purpose entities in our financial statements. Since the cost of each proton therapy center project will generally exceed $100 million, the amount of potential liability and potential for financial loss may be higher than the levels historically assumed by us for our traditional radiation therapy business and may also exceed the project’s value. Insurance covering these contingencies may be unobtainable. If we cannot reasonably mitigate or eliminate these contingencies or risks, our ability to competitively bid upon proton center projects will be negatively impacted or we may be required to assume material amounts of potential liability, all of which may have adverse consequences to us. In addition, we have encountered and may encounter additional challenges in the commercialization of the proton therapy products, which may increase our research and development costs and delay the introduction of our products. This and other unanticipated events could adversely affect our business and make our results of operations unpredictable.
WE HAVE ENTERED INTO A CREDIT FACILITY AGREEMENT THAT restricts certain activities, and failure to comply with this agreement may have an adverse effect on our business, liquidity and financial position.

We maintain a revolving credit facility that contains restrictive financial covenants, including financial covenants that require us to comply with specified financial ratios. We may have to curtail some of our operations to comply with these covenants. In addition, our revolving credit facility contains other affirmative and negative covenants that could restrict our operating and financing activities. These provisions limit our ability to, among other things, incur future indebtedness, contingent obligations or liens, guarantee indebtedness, make certain investments and capital expenditures, sell stock or assets and pay dividends, and consummate certain mergers or acquisitions. Because of the restrictions on our ability to create or assume liens, we may find it difficult to secure additional indebtedness if required. Furthermore, if we fail to comply with the credit facility requirements, we may be in default. Upon an event of default if the credit agreement is not amended or the event of default is not waived, the lender could declare all amounts outstanding, together with accrued interest, to be immediately due and payable. If this happens, we may not be able to make those payments or borrow sufficient funds from alternative sources to make those payments. Even if we were to obtain additional financing, that financing may be on unfavorable terms.

Changes in interpretation or application of generally accepted accounting principles may adversely affect our operating results.

We prepare our financial statements to conform to GAAP. These principles are subject to interpretation by the FASB, American Institute of Certified Public Accountants, the Public Company Accounting Oversight Board, the Securities and Exchange Commission and various other regulatory or accounting bodies. A change in interpretations of, or our application of, these principles can have a significant effect on our reported results and may even affect our reporting of transactions completed before a change is announced. In addition, when we are required to adopt new accounting standards, our methods of accounting for certain items may change, which could cause our results of operations to fluctuate from period to period and make it more difficult to compare our financial results to prior periods. As our operations evolve over time, we may introduce new products or new technologies that require us to apply different accounting principles, including that regarding revenue recognition, than we have applied in past periods. Additionally, we recognize revenues for our proton therapy systems and proton therapy commissioning contracts and for certain highly customized image detection systems in our SIP business under the percentage-of-completion method, which affects the timing of revenue recognition. We could be required to apply these methods to other businesses in the future. The percentage-of-completion method involves considerable use of estimates in determining revenues, costs and profits and in assigning dollar amounts to relevant accounting periods which must be periodically reviewed and appropriately adjusted. For example, revenues recognized under the percentage-of-completion method are based on contract costs incurred to date compared with total estimated contract costs. In circumstances in which the final outcome of a contract cannot be precisely estimated but a loss on the contract is not expected, we recognize revenues under the percentage-of-completion method based on a zero profit margin until more precise estimates can be made. Recognizing revenues using the percentage-of-completion method based on a zero profit margin, as we are doing with the revenues associated with the Scripps Proton Therapy Center, will lower our gross margins and make it more difficult to compare our financial results from quarter to quarter.

If our estimates prove to be inaccurate or circumstances change over time, we would be required to adjust revenues or even record a contract loss in later periods, and our financial results could suffer. In addition, if a loss is expected on a contract under the percentage-of-completion method, the estimated loss would be charged to cost of sales in the period the loss is identified. The application of different types of accounting principles and related potential changes may make it more difficult to compare our financial results from quarter to quarter, and the trading price of VMS common stock could suffer or become more volatile as a result.
ENVIRONMENTAL LAWS IMPOSE COMPLIANCE COSTS ON OUR BUSINESS AND CAN ALSO RESULT IN LIABILITY

We are subject to environmental laws around the world. These laws regulate many aspects of our operations, including our handling, storage, transport and disposal of hazardous materials. They can also impose cleanup liabilities, including with respect to discontinued operations. As a consequence, we can incur significant environmental costs and liabilities, some recurring and others not recurring. Although we follow procedures intended to comply with existing environmental laws, we, like other businesses, can never completely eliminate the risk of contamination or injury from certain materials that we use in our business and, therefore, the prospect of resulting claims and damage payments. We may also be assessed fines or penalties for failure to comply with environmental laws and regulations. Although insurance has provided coverage for portions of cleanup costs resulting from historical occurrences, we maintain only limited insurance coverage for costs or claims that might result from any future contamination.

Future changes in environmental laws could also increase our costs of doing business, perhaps significantly. Several countries, including some in the EU, now require medical equipment manufacturers to bear certain disposal costs of products at the end of the product’s useful life, increasing our costs. The EU has also adopted a directive that may lead to restrictions on the use of certain hazardous substances in some of our products sold there. This directive, along with another that requires material disclosure information to be provided upon request, could increase our operating costs. All of these costs, and any future violations or liabilities under environmental laws or regulations, could have a material adverse effect on our business.

AS A STRATEGY TO ASSIST OUR SALES EFFORTS, WE MAY PARTICIPATE IN PROJECT FINANCING OR OFFER EXTENDED PAYMENT TERMS, WHICH MAY ADVERSELY AFFECT OUR FINANCIAL RESULTS

We have provided financing for the construction and start-up operations of the Scripps Proton Therapy Center, and we may be requested to provide financing to other potential VPT customers in the future. Some of this financing may be secured by assets of the borrower. Providing such financing could adversely affect our financial results, since we cannot provide any assurance that a center will be completed on time or within budget, that the center can or will generate sufficient patient volumes and revenues to support scheduled loan payments or to provide incremental revenue to us, or that the borrower will have the financial means to pay off any financing at maturity. In addition, in connection with our financing of the Scripps Proton Therapy Center, we cannot provide any assurance that any portion of our loan commitment can be syndicated to third parties by ORIX Capital Markets LLC, the agent for the lenders, or that the loan facility can be successfully refinanced upon the maturity of the loan, which has a maximum term of six years. If a borrower does not have the financial means to pay off its debts and if we cannot recover our investment from the sale of any collateral, we may be required to write off the debt investment, which would adversely affect our financial results.

In addition, in some circumstances we offer longer or extended payment terms for qualified customers in our other businesses. Many of the areas where we offer such longer or extended payment terms have under-developed legal systems for securing debt and enforcing collection of debt. As of September 30, 2011, customer contracts with remaining terms of more than one year amounted to less than 1% of our accounts receivable balance. While we qualify customers to whom we offer longer or extended payment terms, their financial positions may change adversely over the longer time period given for payment. This may result in an increase in payment defaults and uncollectible accounts, which would affect our net earnings. In addition, longer or extended payment terms could impact the timing of our revenue recognition, and they have in the past and may in the future result in an increase in our days sales outstanding.
DISRUPTION OF CRITICAL INFORMATION SYSTEMS OR MATERIAL BREACHES IN THE SECURITY OF OUR SYSTEMS MAY ADVERSELY AFFECT OUR BUSINESS AND CUSTOMER RELATIONS.

Information technology helps us operate efficiently, interface with and support our customers, maintain financial accuracy and efficiency, and accurately produce our financial statements. If we do not allocate and effectively manage the resources necessary to build and sustain the proper technology infrastructure, we could be subject to, among other things, transaction errors, processing inefficiencies, the loss of customers, business disruptions, or the loss of or damage to intellectual property through a security breach. If our data management systems do not effectively collect, secure, store, process and report relevant data for the operation of our business, whether due to equipment malfunction or constraints, software deficiencies, or human error, our ability to effectively plan, forecast and execute our business plan and comply with applicable laws and regulations will be impaired, perhaps materially. Any such impairment could materially and adversely affect our financial condition, results of operations, cash flows and the timeliness with which we report our operating results internally and externally.

Moreover, we manufacture and sell products that allow our customers to store confidential information about their patients. While we have implemented security measures to protect our systems from unauthorized access, these measures do not secure our customers’ equipment or any information stored in our customers’ systems or at their locations. A breach of network security and systems or other events that cause the loss or public disclosure of, or access by third parties to, our customers’ stored information could have serious negative consequences for our business, including possible fines, penalties and damages, reduced demand for our solutions, an unwillingness of our customers to use our solutions, harm to our reputation and brand, and time-consuming and expensive litigation, any of which could have an adverse effect on our financial results.

OUR OPERATIONS ARE VULNERABLE TO INTERRUPTION OR LOSS DUE TO NATURAL OR OTHER DISASTERS, POWER LOSS, STRIKES AND OTHER EVENTS BEYOND OUR CONTROL

We conduct a significant portion of our activities, including manufacturing, administration and data processing at facilities located in the State of California and other seismically active areas that have experienced major earthquakes and other natural disasters. We carry limited earthquake insurance that may not be adequate or continue to be available at commercially reasonable rates and terms. A major earthquake or other disaster (such as a major fire, flood, tsunami, volcanic eruption or terrorist attack) affecting our facilities, or those of our suppliers, could significantly disrupt our operations, and delay or prevent product manufacture and shipment during the time required to repair, rebuild or replace our or our suppliers’ damaged manufacturing facilities; these delays could be lengthy and costly. If any of our customers’ facilities are adversely affected by a disaster, shipments of our products could be delayed. Additionally, customers may delay purchases of our products until operations return to normal. Even if we are able to quickly respond to a disaster, the ongoing effects of the disaster could create some uncertainty in the operations of our businesses, such as the recent catastrophe in Japan has created. In addition, our facilities may be subject to a shortage of available electrical power and other energy supplies. Any shortages may increase our costs for power and energy supplies or could result in blackouts, which could disrupt the operations of our affected facilities and harm our business. Further, our products are typically shipped from a limited number of ports, and any disaster, strike or other event blocking shipment from these ports could delay or prevent shipments and harm our business. In addition, concerns about terrorism, the effects of a terrorist attack, political turmoil or an outbreak of epidemic diseases, such as the swine flu, could have a negative effect on our business operations, those of our suppliers and customers, and the ability to travel, resulting in adverse consequences on our revenues and financial performance.
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Item 1B. Unresolved Staff Comments
None.

Item 2. Properties
As of September 30, 2011, we owned and leased a total of approximately 1.9 million square feet of floor space for our office, manufacturing, research and development and other services worldwide. Our executive offices, our Oncology Systems management, some of our Oncology Systems manufacturing facilities and the Ginztion Technology Center (formerly in Mountain View) are located in Palo Alto, California on 30 acres of land under leaseholds that expire in calendar year 2056. We own these Palo Alto facilities, which contain an aggregate of 465,279 square feet of floor space. We also own 47,699 square feet of floor space and two acres of land in Crawley, England. In Beijing, China we own 140,682 square feet of floor space located on five acres of land under a leasehold that expires in calendar year 2056. Our X-Ray Products business is located in Salt Lake City, Utah, where we own 38 acres of land and 340,812 square feet of floor space. In Las Vegas, Nevada, we own 12 acres of land and 191,422 square feet of floor space where our SIP manufacturing and Oncology Systems customer services and support operations are located. One of our Las Vegas buildings and the related land has been pledged as collateral against a loan with a balance of $3.6 million. The remaining balance of our facilities are leased.

We believe that our facilities and equipment are generally well maintained, in good operating condition and adequate for present operations.

Item 3. Legal Proceedings
Under the Amended and Restated Distribution Agreement dated as of January 14, 1999 and other associated agreements that govern the Spin-offs, we retained the liabilities related to the medical systems business and agreed to manage and defend claims related to legal proceedings and environmental matters arising from corporate and discontinued operations. Generally, each of the spun-off subsidiaries is obligated to indemnify us for one third of these liabilities (after adjusting for any insurance proceeds we realize or tax benefits we receive), including certain environmental liabilities, and to indemnify us fully for liabilities arising from the operations of the business transferred to it as part of the Spin-offs. For a more detailed discussion of environmental costs and liabilities, see Note 10, “Commitments and Contingencies” to the Notes to the Consolidated Financial Statements, which is by this reference incorporated herein.

From time to time, we are involved in other legal proceedings arising in the ordinary course of our business and, from time-to-time, acquired as part of business acquisitions that we make. See “MD&A – Other Matters.” While the outcome of these matters is currently not determinable, we do not expect that the ultimate costs to resolve these matters will have a material adverse effect on our consolidated financial position, results of operations, or cash flows.

Item 4. Removed and Reserved

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Item 5. Market for the Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

VMS common stock is traded on the New York Stock Exchange ("NYSE") under the symbol "VAR." The following table sets forth the high and low sales prices for VMS common stock as reported in the consolidated transaction reporting system for the NYSE in fiscal years 2011 and 2010.

<table>
<thead>
<tr>
<th>Fiscal Year 2011</th>
<th>High</th>
<th>Low</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Quarter</td>
<td>$70.97</td>
<td>$59.52</td>
</tr>
<tr>
<td>Second Quarter</td>
<td>$72.19</td>
<td>$64.13</td>
</tr>
<tr>
<td>Third Quarter</td>
<td>$71.85</td>
<td>$64.89</td>
</tr>
<tr>
<td>Fourth Quarter</td>
<td>$71.58</td>
<td>$49.16</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fiscal Year 2010</th>
<th>High</th>
<th>Low</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Quarter</td>
<td>$47.78</td>
<td>$38.71</td>
</tr>
<tr>
<td>Second Quarter</td>
<td>$56.38</td>
<td>$46.96</td>
</tr>
<tr>
<td>Third Quarter</td>
<td>$57.70</td>
<td>$35.50</td>
</tr>
<tr>
<td>Fourth Quarter</td>
<td>$61.38</td>
<td>$50.83</td>
</tr>
</tbody>
</table>

Since the Spin-offs and becoming Varian Medical Systems, Inc., we have not paid any cash dividends on VMS common stock. We have no current plan to pay cash dividends on VMS common stock, and will review that decision periodically. Further, our existing unsecured term loan agreement and revolving credit facility agreement contain provisions that limit our ability to pay cash dividends. Specifically, dividends would not be permitted if, when aggregated with other transactions, we would not be in compliance with our financial covenants. See Note 8, “Credit Facilities” of the Notes to the Consolidated Financial Statements for more information on our revolving credit facility.

As of November 15, 2011, there were approximately 3,249 holders of record of VMS common stock.
PERFORMANCE GRAPH

This graph shows the total return on Varian Medical Systems, Inc. common stock and certain indices from September 29, 2006 until the last day of fiscal year 2011.

COMPARISON OF FIVE YEAR CUMULATIVE TOTAL RETURN*
Among Varian Medical Systems, Inc., the S&P 500 Index and the S&P Healthcare Equipment Index

*$100 invested on 9/29/06 in stock or index, including reinvestment of dividends. Indexes calculated on month-end basis.

<table>
<thead>
<tr>
<th></th>
<th>9/29/06</th>
<th>9/28/07</th>
<th>9/26/08</th>
<th>10/2/09</th>
<th>10/1/10</th>
<th>9/30/11</th>
</tr>
</thead>
<tbody>
<tr>
<td>Varian Medical Systems, Inc.</td>
<td>100.00</td>
<td>78.46</td>
<td>114.59</td>
<td>74.94</td>
<td>113.65</td>
<td>107.70</td>
</tr>
<tr>
<td>S&amp;P 500</td>
<td>100.00</td>
<td>116.44</td>
<td>90.85</td>
<td>84.58</td>
<td>93.17</td>
<td>94.24</td>
</tr>
<tr>
<td>S&amp;P Health Care Equipment</td>
<td>100.00</td>
<td>120.14</td>
<td>119.38</td>
<td>99.92</td>
<td>96.71</td>
<td>100.20</td>
</tr>
</tbody>
</table>

The performance graph and related information shall not be deemed to be soliciting material or to be “filed” with the SEC or to be deemed to be incorporated by reference to any filing under the Securities Act or the Exchange Act.

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### Stock Repurchase Program

The following table provides information with respect to the shares of VMS common stock repurchased by VMS during the fourth quarter of fiscal year 2011.

<table>
<thead>
<tr>
<th>Period</th>
<th>Total Number of Shares Purchased</th>
<th>Average Price Per Share</th>
<th>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs(1)</th>
<th>Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 30, 2011—August 26, 2011</td>
<td>4,861,663(2)</td>
<td>$ 55.11(2)</td>
<td>4,849,638</td>
<td>7,433,718</td>
</tr>
<tr>
<td>August 27, 2011—September 30, 2011</td>
<td>97(3)</td>
<td>$ 53.29(3)</td>
<td>—</td>
<td>7,433,718</td>
</tr>
<tr>
<td>Total</td>
<td>4,861,760</td>
<td>$ 55.11</td>
<td>4,849,638</td>
<td></td>
</tr>
</tbody>
</table>

(1) On August 6, 2010, VMS’s Board of Directors authorized the repurchase of 8,000,000 shares of VMS common stock from August 7, 2010 through September 30, 2011. In February 2011, VMS’s Board of Directors authorized the repurchase of an additional 12,000,000 shares of VMS common stock through the end of our fiscal year 2012. We expect remaining repurchases under this authorization, if any, will be made in open market purchases, in privately negotiated transactions (including accelerated share repurchase programs) or under Rule 10b5-1 share repurchase plans, and may be made from time to time or in one or more blocks. Shares will be retired upon repurchase.

(2) Includes 12,025 shares of VMS common stock that were tendered to VMS in satisfaction of tax withholding obligations upon the vesting of restricted common stock and restricted stock units granted under the Company’s employee stock plans.

Also includes 3,849,638 shares of VMS common stock repurchased under an August 2011 accelerated share repurchase agreement, as to which the average price paid per share was based on 85% of the initial $250 million payment under this agreement (i.e., $213 million). See Note 12, “Stockholders’ Equity” of the Notes to the Consolidated Financial Statements for further discussions.

(3) Represents shares of VMS common stock that were tendered to VMS in satisfaction of tax withholding obligations upon the vesting of restricted common stock and restricted stock units granted under the Company’s employee stock plans.
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**Item 6.  Selected Financial Data**

We derived the following selected financial data from our audited consolidated financial statements for the five fiscal years ended from September 29, 2006 to September 30, 2011. The following financial data should be read in conjunction with our consolidated financial statements and the accompanying notes and the MD&A included elsewhere herein.

**Summary of Operations:**

<table>
<thead>
<tr>
<th>(In millions, except per share amounts)</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
<th>2008</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$2,596.7</td>
<td>$2,356.6</td>
<td>$2,214.1</td>
<td>$2,069.7</td>
<td>$1,755.1</td>
</tr>
<tr>
<td>Earnings from continuing operations before taxes</td>
<td>588.7</td>
<td>532.9</td>
<td>474.6</td>
<td>426.0</td>
<td>346.0</td>
</tr>
<tr>
<td>Taxes on earnings</td>
<td>180.1</td>
<td>165.4</td>
<td>143.1</td>
<td>130.7</td>
<td>103.1</td>
</tr>
<tr>
<td>Earnings from continuing operations</td>
<td>408.6</td>
<td>367.5</td>
<td>331.5</td>
<td>295.3</td>
<td>242.9</td>
</tr>
<tr>
<td>Loss from discontinued operations, net of taxes(1)</td>
<td>(9.7)</td>
<td>(7.1)</td>
<td>(12.5)</td>
<td>(15.8)</td>
<td>(3.4)</td>
</tr>
<tr>
<td>Net earnings</td>
<td>$398.9</td>
<td>$360.4</td>
<td>$319.0</td>
<td>$279.5</td>
<td>$239.5</td>
</tr>
<tr>
<td>Net earnings (loss) per share—basic</td>
<td>$3.50</td>
<td>$3.02</td>
<td>$2.67</td>
<td>$2.37</td>
<td>$1.91</td>
</tr>
<tr>
<td>Continuing operations</td>
<td>(0.08)</td>
<td>(0.06)</td>
<td>(0.10)</td>
<td>(0.13)</td>
<td>(0.03)</td>
</tr>
<tr>
<td>Discontinued operations(1)</td>
<td>$3.42</td>
<td>$2.96</td>
<td>$2.57</td>
<td>$2.24</td>
<td>$1.88</td>
</tr>
<tr>
<td>Net earnings per share</td>
<td>$3.44</td>
<td>$2.96</td>
<td>$2.65</td>
<td>$2.31</td>
<td>$1.86</td>
</tr>
<tr>
<td>Net earnings (loss) per share—diluted</td>
<td>(0.08)</td>
<td>(0.05)</td>
<td>(0.10)</td>
<td>(0.12)</td>
<td>(0.03)</td>
</tr>
<tr>
<td>Continuing operations</td>
<td>$3.36</td>
<td>$2.91</td>
<td>$2.55</td>
<td>$2.19</td>
<td>$1.83</td>
</tr>
<tr>
<td>Discontinued operations(1)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net earnings per share</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Financial Position at Fiscal Year End:**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Working capital</td>
<td>$728.7</td>
<td>$777.8</td>
<td>$830.1</td>
<td>$612.7</td>
<td>$378.5</td>
</tr>
<tr>
<td>Total assets</td>
<td>2,498.8</td>
<td>2,324.0</td>
<td>2,308.2</td>
<td>1,975.5</td>
<td>1,684.4</td>
</tr>
<tr>
<td>Long-term debt (including current maturities)</td>
<td>16.1</td>
<td>23.4</td>
<td>32.4</td>
<td>40.4</td>
<td>49.4</td>
</tr>
<tr>
<td>Short-term borrowings</td>
<td>181.4</td>
<td>20.0</td>
<td>4.4</td>
<td>—</td>
<td>41.0</td>
</tr>
<tr>
<td>Stockholders’ equity</td>
<td>1,243.9</td>
<td>1,275.4</td>
<td>1,311.8</td>
<td>1,027.2</td>
<td>821.5</td>
</tr>
</tbody>
</table>

(1) In September 2008, we approved a plan to sell Research Instruments. The sale of Research Instruments was completed in the second quarter of fiscal year 2009. The Company classified the operating results of Research Instruments as a discontinued operation in the Consolidated Statements of Earnings for all periods presented. The net loss of $9.7 million, $7.1 million, $12.5 million, $15.8 million and $3.4 million was reported in discontinued operations for fiscal years 2011, 2010, 2009, 2008 and 2007, respectively.
Overview

In fiscal year 2011, net earnings per diluted share from continuing operations increased 16% and total revenues increased 10% over fiscal year 2010. Including the effect of revenues recognized for the proton therapy system at the Scripps Proton Therapy Center with a zero profit margin (discussed further below), fiscal year 2011 gross margin improved slightly and operating margin was relatively flat, compared with fiscal year 2010. In fiscal year 2011, diluted weighted average shares outstanding decreased from fiscal year 2010 primarily because we repurchased 9.0 million shares of VMS common stock during the year. Each of Oncology Systems, X-ray Products, SIP and VPT reported growth in net orders in fiscal year 2011 from fiscal year 2010. At the end of fiscal year 2011, our backlog increased 15% from the end of fiscal year 2010. Primary uses of cash in fiscal year 2011 included payments for stock repurchases, including amounts paid under accelerated repurchase agreements. In fiscal year 2011, we amended the revolving credit facility with Bank of America, N.A. to increase our borrowing capacity to $300 million. At the end of fiscal year 2011, our cash and cash equivalents were $564 million and our short-term borrowings and long-term debt totaled $198 million.

In the fourth quarter of fiscal year 2011, we recorded the proton therapy system order from CPTC for the Scripps Proton Therapy Center in San Diego, California and began recognizing revenues on this contract. During fiscal year 2011, we committed to loan up to $115 million to CPTC to finance the construction and startup operations of the Scripps Proton Therapy Center, under which commitment we had loaned $19 million as of fiscal year end.

Effective in the fourth quarter of fiscal year 2008, we classified Research Instruments as a discontinued operation for all periods presented in our Consolidated Statements of Earnings. Including a $0.08 net loss per diluted share from this discontinued operation, net earnings in fiscal year 2011 were $3.36 per diluted share. As of September 30, 2011, we had no remaining obligations related to Research Instruments, which was previously included in the “Other” category. Unless otherwise stated, the discussion in this MD&A pertains to our continuing operations.

Oncology Systems. Our largest business segment is Oncology Systems, which designs, manufacturers, sells and services hardware and software products for radiation treatment of cancer with conventional radiotherapy, IMRT, IGRT, volumetric modulated arc therapy (an advanced form of IMRT), stereotactic radiotherapy, SRS, SBRT and brachytherapy.

Oncology Systems net orders increased 8%, or 6% on a constant currency basis, in fiscal year 2011 over fiscal year 2010 reflecting increased net orders in both the international region and North America. In fiscal year 2011, Oncology Systems total revenues rose 9% over fiscal year 2010, with a 13% increase in North America and a 5% increase in the international region. The TrueBeam system and the service contract business were significant contributors of growth in Oncology Systems net orders and revenues in fiscal year 2011 over fiscal year 2010. Oncology Systems gross margin increased 0.5 percentage points in fiscal year 2011 over fiscal year 2010 due to increases in both service gross margin and higher proportion of product revenues from our TrueBeam system (which carries a higher gross margin than our other linear accelerators).

In April 2011, we received approval by the State Food & Drug Administration in China to market and sell our TrueBeam system in China. In the third quarter of fiscal year 2011, we received Shonin approval from the Japanese Ministry of Health, Labor and Welfare to market the TrueBeam system in Japan. Through September 30, 2011, we had received orders for 380 TrueBeam systems since its introduction, a majority of which came from North America. A minority of these orders represented upgrades from other linear accelerators already in our backlog.
Demand for our Oncology Systems products is impacted in part by the strength and sustainability of an economic recovery in the United States, stability of sovereign debt in Europe and the level of related austerity measures to control the sovereign debt crisis, as well as the slowdown of economic activities in faster growing regions, such as China.

In October 2011, we acquired Calypso, a privately-held supplier of specialized products and software for real-time tumor tracking and motion management during radiosurgery and radiotherapy. The price was $10 million plus potential contingent consideration if certain milestones are achieved. This acquisition enables us to offer real-time, non-ionizing tumor tracking tools for enhancing the precision of cancer treatments. We expect Calypso will have a dilutive effect on our operating earnings in fiscal year 2012. In May 2011, we signed an agreement with Augmenix, a privately-held company that is developing hydrogel products to decrease irradiation of radiation sensitive tissue such as the rectum through creating greater spatial separation between the sensitive tissue (e.g., rectum) and the treated area (e.g., prostate) during treatments, under which we paid $15 million to Augmenix for a minority equity interest plus an exclusive option to purchase the remaining equity interest if certain agreed-upon milestones have been met. In March 2011, we acquired a privately-held supplier of devices for delivery of brachytherapy treatment of cancer for approximately $8 million.

**X-Ray Products**. Our X-ray Products business segment, designs, manufactures and sells x-ray tubes and flat panel detectors for use in a range of applications, including radiographic or fluoroscopic imaging, mammography, special procedures and industrial applications; and x-ray tubes for use in computed tomography (“CT”) scanning.

In fiscal year 2011, X-ray Products reported record net orders, revenues and operating earnings. Net orders and revenues increased 15% and 16%, respectively, in fiscal year 2011 over fiscal year 2010. Both the flat and the x-ray tube product lines contributed to the increase in net orders and revenues. X-ray Products gross margin improved in fiscal year 2011 over fiscal year 2010 primarily due to higher sales volume, product mix shift towards flat panel products (which carry higher gross margins), as well as lower costs of quality for our x-ray tube products. Our success in our X-ray Products business depends upon our ability to anticipate changes in our markets, the direction of technological innovation and the demands of our customers. In addition, changes in access to diagnostic radiology or the reimbursement rates associated with diagnostic radiology as a result of the Affordable Health Care for America Act and similar state proposals will likely affect demand for our products in our X-ray Products business.

**Other.** The “Other” category is comprised of: (i) SIP, which designs, manufactures, sells and services Linatron® x-ray accelerators, imaging processing software and image detection products (including IntellX™) for security and inspection, (ii) our VPT business, which designs, develops, manufactures, sells and services products and systems for delivering proton therapy treatments, and (iii) the operations of the GTC, our scientific research facility.

Net orders in the “Other” category increased $201 million in fiscal year 2011 from fiscal year 2010 reflecting both the $88 million order for the Scripps Proton Therapy Center project from CPTC in fiscal year 2011 and the cancellation of the $62 million Skandion Kliniken order in fiscal year 2010. The increase in net orders in the “Other” category in fiscal year 2011 over fiscal year 2010 was also attributable to an increase in net orders in SIP. Revenues in the “Other” category increased in fiscal year 2011 over fiscal year 2010 because of the increase in VPT revenues from the Scripps Proton Therapy Center project, partially offset by a decrease in SIP revenues. See “Net Orders” and “Other Revenues” for further discussion of the order and revenues related to the Scripps Proton Therapy Center project.

This discussion and analysis of our financial condition and results of operations is based upon and should be read in conjunction with the Consolidated Financial Statements and the notes included elsewhere in this Annual Report on Form 10-K, as well as the information contained under Item 1A, “Risk Factors.” We discuss our results of operations below.
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Critical Accounting Estimates

The preparation of our financial statements and related disclosures in conformity with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses. These estimates and assumptions are based on historical experience and on various other factors that we believe are reasonable under the circumstances. We periodically review our accounting policies, estimates and assumptions and make adjustments when facts and circumstances dictate. In addition to the accounting policies that are more fully described in the Notes to the Consolidated Financial Statements included in this Annual Report on Form 10-K, we consider the critical accounting policies described below to be affected by critical accounting estimates. Our critical accounting policies that are affected by accounting estimates include revenue recognition, share-based compensation expense, valuation of allowance for doubtful accounts, valuation of inventories, assessment of recoverability of goodwill and intangible assets, valuation of warranty obligations, assessment of environmental remediation liabilities, valuation of defined benefit pension and post-retirement benefit plans, valuation of derivative instruments and taxes on earnings. Such accounting policies require us to use judgments, often as a result of the need to make estimates and assumptions regarding matters that are inherently uncertain; and actual results could differ materially from these estimates. For a discussion of how these estimates and other factors may affect our business, see Item 1A, “Risk Factors.”

Revenue Recognition

We frequently enter into sales arrangements with customers that contain multiple elements or deliverables such as hardware, software and services. Judgments as to the allocation of consideration from an arrangement to the multiple elements of the arrangement, and the appropriate timing of revenue recognition are critical with respect to these arrangements to ensure compliance with GAAP.

At the beginning of the second quarter of fiscal year 2010, we elected to early adopt the amended software revenue guidance and amended multiple deliverable revenue arrangement guidance on a prospective basis as of the beginning of fiscal year 2010 and have applied the amended guidance for revenue arrangements originating or materially modified after October 2, 2009. Under the amended guidance, the allocation of consideration in a multiple element arrangement is affected by the determination of whether any software deliverables that function together with other hardware components to deliver the hardware products’ essential functionality is considered as non-software products for purpose of revenue recognition. The allocation of consideration to each non-software deliverable is based on the assumptions we use to establish its selling price, which are based on vendor-specific objective evidence (“VSOE”) of selling price, if it exists, otherwise, third-party evidence of selling price, if it exists, and if not on estimated selling prices. In addition, the allocation of consideration to each software deliverable in a multiple element arrangement is affected by our judgment as to whether VSOE of its fair value exists in these arrangements.

Under the prior authoritative guidance, the allocation of consideration to each deliverable in a multiple deliverable arrangement is affected by our judgment as to whether objective and reliable evidence of fair value existed for hardware deliverables and VSOE of the fair value existed for software deliverables in these arrangements.

Changes to the elements in an arrangement and the amounts allocated to each element could affect the timing and amount of revenue recognition. Revenue recognition also depends on the timing of shipment and is subject to customer acceptance and the readiness of customers’ facilities. If shipments are not made on scheduled timelines or if the products are not accepted by the customer in a timely manner, our reported revenues may differ materially from expectations.

In addition, revenues related to certain highly customized image detection systems, proton therapy systems and proton therapy system commissioning contracts are recognized in accordance with contract accounting. For contracts in which we can estimate contract costs with reasonable dependability, we
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recognize contract revenues under the percentage-of-completion method. Revenues recognized under the percentage-of-completion method are based on contract costs incurred to date compared with total estimated contract costs. Changes in estimates of total contract revenue, total contract cost or the extent of progress towards completion are recognized in the period in which the changes in estimates are identified. Estimated losses on contracts are recognized in the period in which the loss is identified. In circumstances in which the final outcome of a contract cannot be precisely estimated but a loss on the contract is not expected, the Company recognizes revenues under the percentage-of-completion method based on a zero profit margin until more precise estimates can be made. If and when the Company can make more precise estimates, revenues and costs of sales are adjusted in the same period. Because the percentage-of-completion method involves considerable use of estimates in determining revenues, costs and profits and in assigning the dollar amounts to relevant accounting periods, and because the estimates must be periodically reviewed and appropriately adjusted, if our estimates prove to be inaccurate or circumstances change over time, we may be forced to adjust revenues or even record a contract loss in later periods. If a loss is expected on a contract under the percentage-of-completion method, the estimated loss would be charged to cost of sales in the period the loss is identified.

Share-based Compensation Expense
We value our stock options granted and the option component of the shares of VMS common stock purchased under the Employee Stock Purchase Plan using the Black-Scholes option-pricing model. The determination of fair value of share-based payment awards on the date of grant using the Black-Scholes option-pricing model is affected by VMS’s stock price, as well as the input of other subjective assumptions, including the expected term of stock awards and the expected price volatility of VMS stock over the expected term of the awards.

The expected term is based on the observed and expected time to post-vesting exercise and post-vesting cancellations of stock options by our employees. We determined the expected term of stock options based on the demographic grouping of employees and retirement eligibility. We used a combination of historical and implied volatility, or blended volatility, in deriving the expected volatility assumption. Blended volatility represents the weighted average of implied volatility and historical volatility. Implied volatility is derived based on traded options on VMS common stock. Implied volatility is weighted in the calculation of blended volatility based on the ratio of the term of the exchange-traded options to the expected terms of the employee stock options. Historical volatility represents the remainder of the weighting. Our decision to incorporate implied volatility was based on our assessment that implied volatility of publicly traded options on VMS common stock is reflective of market conditions and is generally reflective of both historical volatility and expectations of how future volatility will differ from historical volatility. In determining the extent of use of implied volatility, we considered: (i) the volume of market activity of traded options; (ii) the ability to reasonably match the input variables of traded options to those of stock options granted by us, including the date of grant; (iii) the similarity of the exercise prices; and (iv) the length of term of traded options. After considering the above factors, we determined that we could not rely exclusively on implied volatility based on the fact that the term of VMS exchange-traded options is less than one year and that it is different from the expected terms of the stock options we grant. Therefore, we believe a combination of the historical volatility over the expected terms of the stock options we grant and the implied volatility of exchange-traded options best reflects the expected volatility of VMS common stock. The risk-free interest rate assumption is based upon observed interest rates appropriate for the term of our stock options. The dividend yield assumption is based on our history and expectation of no dividend payouts. If factors change and we employ different assumptions in future periods, the compensation expense that we record may differ significantly from what we have recorded in the current period. In addition, we are required to estimate the expected forfeiture rate and recognize expense only for those shares expected to vest. If our actual forfeiture rate is materially different from our estimate, the stock-based compensation expense could be significantly different from what we have recorded in the current period.

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Allowance for Doubtful Accounts

We evaluate the creditworthiness of our customers prior to authorizing shipment for all major sale transactions. Except for government tenders, group purchases and orders with letters of credit in Oncology Systems, SIP and VPT, and orders in our X-ray Products business, our payment terms usually require payment of a small portion of the total amount due when the customer signs the purchase order, a significant amount upon transfer of risk of loss to the customer and the remaining amount upon completion of the installation. On a quarterly basis, we evaluate aged items in the accounts receivable aging report and provide an allowance in an amount we deem adequate for doubtful accounts. If our evaluation of our customers’ financial conditions does not reflect our future ability to collect outstanding receivables, additional provisions may be needed and our operating results could be negatively affected.

Inventories

Our inventories include high technology parts and components that are highly specialized in nature and that are subject to rapid technological obsolescence. We have programs to minimize the required inventories on hand and we regularly review inventory quantities on hand and on order and adjust for excess and obsolete inventory based primarily on historical usage rates and our estimates of product demand and production. Actual demand may differ from our estimates, in which case we may have understated or overstated the provision required for obsolete and excess inventory, which would have an impact on our operating results.

Goodwill and Intangible Assets

Goodwill is initially recorded when the purchase price paid for a business acquisition exceeds the estimated fair value of the net identified tangible and intangible assets acquired. The majority of businesses that we have acquired have not had significant identified tangible assets and, as a result, we have typically allocated a significant portion of the purchase price to intangible assets and goodwill. Our future operating performance will be impacted by the future amortization of these acquired intangible assets and potential impairment charges related to these intangibles or to goodwill if indicators of impairment exist. The allocation of the purchase price from business acquisitions to goodwill and intangible assets could have a significant impact on our future operating results. In addition, the allocation of the purchase price of the acquired businesses to goodwill and intangible assets requires us to make significant estimates and assumptions, including estimates of future cash flows expected to be generated by the acquired assets and the appropriate discount rate for those cash flows. Should conditions differ from management’s estimates at the time of the acquisition, material write-downs of intangible assets and/or goodwill may be required, which would adversely affect our operating results.

In accordance with Accounting Standard Codification ("ASC") 350, we evaluate goodwill for impairment at least annually or whenever an event occurs or circumstances changes that would more likely than not reduce the fair value of a reporting unit below its carrying amount. The impairment test for goodwill is a two-step process. Step one consists of a comparison of the fair value of a reporting unit against its carrying amount, including the goodwill allocated to each reporting unit. We determine the fair value of our reporting units based on the present value of estimated future cash flows of the reporting units. If the carrying amount of the reporting unit is in excess of its fair value, step two requires the comparison of the implied fair value of the reporting unit’s goodwill against the carrying amount of the reporting unit’s goodwill. Any excess of the carrying value of the reporting unit’s goodwill over the implied fair value of the reporting unit’s goodwill is recorded as an impairment loss. The impairment test for intangible assets with indefinite useful lives, if any, consists of a comparison of fair value to carrying value, with any excess of carrying value over fair value being recorded as an impairment loss. Based on the most recent annual goodwill impairment testing that we performed in fiscal year 2011 for each of our four reporting units with goodwill (Oncology Systems, X-ray Products, SIP and VPT), the fair value of each such reporting unit was substantially in excess of its carrying value. We will continue to make
assessments of impairment on an annual basis or more frequently if indicators of potential impairment arise.

**Warranty Obligations**

We warrant most of our products for a specific period of time, usually twelve months, against material defects. We provide for the estimated future costs of warranty obligations in cost of revenues when the related revenues are recognized. The accrued warranty costs represent our best estimate at the time of sale of the total costs that we will incur to repair or replace product parts that fail while still under warranty. The amount of accrued estimated warranty costs obligation for established products is primarily based on historical experience as to product failures adjusted for current information on repair costs. For new products, estimates will include historical experience of similar products, as well as reasonable allowance for start-up expenses. Actual warranty costs could differ from the estimated amounts. On a quarterly basis, we review the accrued balances of our warranty obligations and update the historical warranty cost trends, if required. If we were required to accrue additional warranty costs in the future, it would have a negative effect on our operating results.

**Environmental Matters**

We are subject to a variety of environmental laws around the world. Those laws regulate multiple aspects of our operations, including the handling, storage, transport and disposal of hazardous substances. They impose costs on our operations and in connection with past operations. In connection with past operations, we record environmental remediation liabilities when we conclude that environmental assessments or remediation efforts are probable and we believe we can reasonably estimate the costs of those efforts. Our accrued environmental costs represent our best estimate of the total costs of assessments and remediation and the time period over which we expect to incur those costs. We review these accrued balances quarterly. Were we required to increase or decrease the accrued environmental costs in the future, it would adversely or favorably impact our operating results.

**Defined Benefit Pension and Post-Retirement Benefit Plans**

We sponsor five defined benefit pension plans in Germany, Japan, Switzerland and the United Kingdom covering employees who meet the applicable eligibility requirements in these countries. In July 2007, we made changes to the defined benefit pension plan in the United Kingdom by terminating the accrual of additional benefits for existing participants and suspending the enrollment of new participants. Although we do not have any defined benefit pension plans in the United States, we sponsor a post-retirement benefit plan that provides healthcare benefits to certain eligible retirees. Several statistical and other factors that attempt to anticipate future events are used in calculating the expenses and liabilities related to those plans for which the benefits are actuarially determined, such as our defined benefit pension and post-retirement benefit plans. These factors include assumptions about the discount rate, expected return on plan assets, rate of future compensation increases and rate of healthcare cost increases, all of which we determine within certain guidelines. In addition, we also use assumptions, such as withdrawal and mortality rates, to calculate the expenses and liabilities. The actuarial assumptions we use are long-term assumptions and may differ materially from actual experience particularly in the short term due to changing market and economic conditions and changing participant demographics. These differences may have a significant impact on the amount of defined benefit pension and post-retirement benefit plan expense we record.

The expected rates of return on the various defined benefit pension plans’ assets are based on the asset allocation of each plan and the long-term projected return on those assets. The discount rate enables us to state expected future cash flows at a present value on the measurement date. The discount rates used for defined benefit plans in all countries are based primarily on the yields of a universe of high quality corporate bonds in each applicable country or the spot rate of high quality AA-rated corporate bonds,
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with durations corresponding to the expected durations of the benefit obligations. A change in the discount rate will cause the present value of benefit obligations to change in the opposite direction.

Valuation of Derivative Instruments

We use foreign currency forward contracts to reduce the effects of currency fluctuations on sales transactions denominated in foreign currencies and on assets and liabilities denominated in foreign currencies. These foreign currency forward contracts are derivative instruments and are measured at fair value. ASC 820 establishes three levels of inputs that may be used to measure fair value (see Note 3, “Fair Value” of the Notes to the Consolidated Financial Statements). Each level of input has different levels of subjectivity and difficulty involved in determining fair value. The fair value of foreign currency forward contracts are calculated primarily using Level 2 inputs, which include currency spot and forward rates, interest rate and credit or non-performance risk. The spot rate for each currency is the same spot rate used for all balance sheet translations at the measurement date and sourced from our major trading banks. The forward point values for each currency and the London Interbank Offered Rate (“LIBOR”) to discount assets and liabilities are interpolated from commonly quoted broker services. One year credit default swap spreads of the counterparty at the measurement date are used to adjust derivative assets, all of which mature in less than 12 months, for non-performance risk. We are required to adjust derivative liabilities to reflect the potential non-performance risk to lenders based on our incremental borrowing rate. Each contract is individually adjusted using the counterparty (for net asset) or our discount rate (for net liability). The use of Level 2 inputs in determining fair values requires certain management judgment and subjectivity. Changes to these Level 2 inputs could have a material impact to the valuation of our derivative instruments, as well as on our result of operations.

Taxes on Earnings

We are subject to taxes on earnings in both the United States and numerous foreign jurisdictions. As a global taxpayer, significant judgments and estimates are required in evaluating our tax positions and determining our provision for taxes on earnings.

The provisions in ASC 740 related to accounting for uncertainty in income taxes contain a two-step approach to recognizing, derecognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining whether the weight of available evidence indicates that it is more likely than not that, based on the technical merits, the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon settlement. Recognition, derecognition and measurement are based on management’s best judgment given the facts, circumstances and information available at the end of the accounting period. A tax benefit should be recognized in the first period in which it meets the more likely than not recognition threshold, and conversely, a tax benefit previously recognized should be derecognized in the first period in which new information results in a change in judgment in which the position fails to meet the recognition threshold. A benefit not previously recognized would be recognized when the tax position is effectively settled through examination, negotiation or litigation with tax authorities, or when the statute of limitations for the relevant taxing authority to examine and challenge the position has expired. Our policy is to include interest and penalties related to unrecognized tax benefits within the provision for taxes on earnings.

Generally, the carrying value of our net deferred tax assets assumes that we will be able to generate sufficient future taxable earnings in the applicable tax jurisdictions to utilize these deferred tax assets. Should we conclude it is more likely than not that we will be unable to recover our net deferred tax assets in these tax jurisdictions, we would increase our valuation allowance and our tax provision would increase in the period in which we make such a determination.

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Our foreign earnings are generally taxed at rates lower than U.S. rates. Our effective tax rate is impacted by existing tax laws in both the United States and in the respective countries in which our foreign subsidiaries do business. In addition, a decrease in the percentage of our total earnings from our foreign countries, or a change in the mix of foreign countries among particular tax jurisdictions, could increase our effective tax rate. Also, our current effective tax rate does not assume U.S. taxes on certain undistributed profits of certain foreign subsidiaries. These earnings could become subject to incremental foreign withholding or U.S. federal and state taxes should they either be deemed or actually remitted to the United States.

Results of Operations

Fiscal Year

Our fiscal year is the 52- or 53-week period ending on the Friday nearest September 30. Fiscal year 2011 was the 52-week period ended on September 30, 2011. Fiscal year 2010 was the 52-week period ended on October 1, 2010 and fiscal year 2009 was the 53-week period ended on October 2, 2009. Set forth below is a discussion of our results of operations for fiscal years 2011, 2010 and 2009. As indicated above, the operating results of Research Instruments have been segregated and presented as a discontinued operation in our Consolidated Statements of Earnings for all periods.

Discussion of Results of Operations for Fiscal Years 2011, 2010 and 2009

Total Revenues

Revenues by sales classification

<table>
<thead>
<tr>
<th>(Dollars in millions)</th>
<th>2011</th>
<th>% Change</th>
<th>2010</th>
<th>% Change</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Product</td>
<td>$1,971</td>
<td>9%</td>
<td>$1,814</td>
<td>3%</td>
<td>$1,767</td>
</tr>
<tr>
<td>Service Contracts and Other</td>
<td>626</td>
<td>15%</td>
<td>543</td>
<td>21%</td>
<td>447</td>
</tr>
<tr>
<td>Total Revenues</td>
<td>$2,597</td>
<td>10%</td>
<td>$2,357</td>
<td>6%</td>
<td>$2,214</td>
</tr>
<tr>
<td>Product as a percentage of total revenues</td>
<td>76 %</td>
<td>77 %</td>
<td>80 %</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service Contracts and Other as a percentage of total revenues</td>
<td>24 %</td>
<td>23 %</td>
<td>20 %</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Revenues by region

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>% Change</th>
<th>2010</th>
<th>% Change</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>North America</td>
<td>$1,170</td>
<td>16%</td>
<td>$1,012</td>
<td>(9%)</td>
<td>$1,111</td>
</tr>
<tr>
<td>Europe</td>
<td>788</td>
<td>5%</td>
<td>747</td>
<td>21%</td>
<td>620</td>
</tr>
<tr>
<td>Asia</td>
<td>537</td>
<td>5%</td>
<td>513</td>
<td>24%</td>
<td>412</td>
</tr>
<tr>
<td>Rest of world</td>
<td>102</td>
<td>20%</td>
<td>85</td>
<td>19%</td>
<td>71</td>
</tr>
<tr>
<td>Total International(1)</td>
<td>1,427</td>
<td>6%</td>
<td>1,345</td>
<td>22%</td>
<td>1,103</td>
</tr>
<tr>
<td>Total</td>
<td>$2,597</td>
<td>10%</td>
<td>$2,357</td>
<td>6%</td>
<td>$2,214</td>
</tr>
</tbody>
</table>

North America as a percentage of total revenues

|                | 2011 | 45% | 2010 | 43% | 2009 | 50% |

International as a percentage of total revenues

|                | 2011 | 55% | 2010 | 57% | 2009 | 50% |

(1) We consider international revenues to be revenues outside of North America.

Total revenues increased in fiscal year 2011 over fiscal year 2010 due to revenue growth in Oncology Systems, X-ray Products and VPT, partially offset by a decrease in SIP revenues. Total revenues increased in fiscal year 2010 over fiscal year 2009, as increased revenues in Oncology Systems, X-ray Products and VPT were partially offset by a decrease in SIP revenues.

In fiscal year 2011, Oncology Systems, X-ray Products and VPT contributed to the growth in product revenues over fiscal year 2010, partially offset by a decline in SIP product revenues. In fiscal year 2010,
the increase in product revenues over fiscal year 2009 was primarily due to an increase in product revenues from X-ray Products, which was mostly offset by the decreases in product revenues from Oncology Systems and SIP. Product revenues grew faster from fiscal year 2010 to fiscal year 2011 as compared to fiscal year 2009 to fiscal year 2010, primarily because Oncology Systems product revenues showed growth in fiscal year 2011 over fiscal year 2010 and because VPT began to recognize revenues for the Scripps Proton Therapy Center project.

Service contract and other revenues increased in fiscal year 2011 over fiscal year 2010 due to an increase in Oncology Systems service contract revenues and, to a lesser extent, an increase in SIP service contract and other revenues, partially offset by a decline in VPT service contract revenues.

Oncology Systems service contracts revenues were the primary contributor to the growth in service contracts and other revenues in fiscal year 2010 over fiscal year 2009, although, to a lesser extent, VPT and SIP also contributed to the increase in service contracts and other revenues. Service contracts and other revenues grew slower in fiscal year 2011 over 2010 compared to fiscal year 2010 over fiscal year 2009 primarily due to the slower growth in Oncology Systems service contract revenues in fiscal year 2011 over fiscal year 2010.

The increase in North American revenues in fiscal year 2011 from fiscal year 2010 was due to increases in revenues in Oncology Systems, X-ray Products, and the VPT and SIP businesses. North American revenues decreased in fiscal year 2010 over fiscal year 2009 as the decline in North American revenues from Oncology Systems and SIP more than offset the increase in X-ray Products North American revenues.

International revenues increased in fiscal year 2011 over fiscal year 2010 due to increases in international revenues in Oncology Systems and X-ray Products, although these were partially offset by declines in international revenues in SIP and VPT. All international regions contributed to the growth in international revenues in fiscal year 2011 over fiscal year 2010. Overall, the U.S. dollar was weaker against foreign currencies in fiscal year 2011 compared to fiscal year 2010, which favorably affected our international revenues when measured in U.S. dollars.

International revenues also grew in fiscal year 2010 over fiscal year 2009, with Oncology Systems, X-ray Products, SIP and VPT all contributing to the growth. Europe, with revenue growth from all businesses, and Asia, with revenue growth primarily from Oncology Systems and X-ray Products, contributed to the bulk of the growth in international revenues in fiscal year 2010 over fiscal year 2009. In the rest of the world region, the increase in Oncology Systems revenues in fiscal year 2010 over fiscal year 2009 was partially offset by a decrease in X-ray Products revenues. Overall, the U.S. dollar was weaker against foreign currencies in fiscal year 2010 compared to fiscal year 2009, which favorably affected our international revenues when measured in U.S. dollars.

### Oncology Systems Revenues

<table>
<thead>
<tr>
<th>Revenues by sales classification (Dollars in millions)</th>
<th>2011</th>
<th>% Change</th>
<th>2010</th>
<th>% Change</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Product</td>
<td>$1,416</td>
<td>5%</td>
<td>$1,343</td>
<td>(1%)</td>
<td>$1,363</td>
</tr>
<tr>
<td>Service Contracts(1)</td>
<td>606</td>
<td>17%</td>
<td>519</td>
<td>19%</td>
<td>435</td>
</tr>
<tr>
<td>Total Oncology Systems</td>
<td>$2,022</td>
<td>9%</td>
<td>$1,862</td>
<td>4%</td>
<td>$1,798</td>
</tr>
</tbody>
</table>

| Product as a percentage of Oncology Systems revenues  | 70%  | 72%      | 76%  |
| Service Contracts as a percentage of Oncology Systems revenues | 30%  | 28%      | 24%  |
| Oncology Systems revenues as a percentage of total revenues | 78%  | 79%      | 81%  |
Oncology Systems product revenues increased in fiscal year 2011 over fiscal year 2010 primarily due to increases in revenues from sales of our linear accelerators and, to a lesser extent, from sales of our software products. Oncology Systems product revenues decreased in fiscal year 2010 over fiscal year 2009 primarily as a result of decreased revenues from sales of our linear accelerators, partially offset by increased revenues from sales of our brachytherapy products.

The increases in service contract revenues, in fiscal year 2011 over fiscal year 2010 and in fiscal year 2010 over fiscal year 2009, were primarily driven by increased customer adoption of service contracts as our products become more sophisticated and by increased number of customers as the installed base of our products continues to grow. Since service contract revenues grew faster than product revenues from fiscal year 2009 to fiscal year 2010 and from fiscal year 2010 to fiscal year 2011, service contract revenues also increased as a percentage of total Oncology Systems revenues in each fiscal year.

Overall, the U.S. dollar was weaker against foreign currencies in fiscal year 2011 compared to fiscal year 2010 and in fiscal year 2010 compared to fiscal year 2009, which favorably affected our international revenues when measured in U.S. dollars.

The international region represented more than half of total Oncology Systems revenues in both fiscal years 2011 and 2010. In fiscal year 2011, Oncology Systems revenues grew over fiscal year 2010 in all international regions, except for Asia, where a supplemental government spending program resulted in high Japanese revenues in fiscal year 2010. The increase in Oncology Systems international revenues in fiscal year 2011 over fiscal year 2010 was primarily due to an increase in service contract revenues in all international regions, as well as an increase in product revenues from sales of our software products in all international regions, that was partially offset by decreased product revenues from our high energy linear accelerators in Asia. Overall, the U.S. dollar was weaker against foreign currencies in fiscal year 2011 compared to fiscal year 2010 which favorably affected our Oncology Systems international revenues when measured in U.S. dollars. In fiscal year 2010, the international region drove the growth in Oncology Systems revenues over fiscal year 2009. All international regions contributed to the increase in international Oncology Systems revenues in fiscal year 2010 over fiscal year 2009. The increase in international Oncology Systems revenues in fiscal year 2010 over fiscal year 2009 reflected higher product revenue driven by increased sales across most product lines, as well as an increase in service contract revenues. Overall, the U.S. dollar was weaker against foreign currencies in fiscal year 2010 compared to fiscal year 2009, which favorably affected our international revenues when measured in U.S. dollars.

### Revenues by region

<table>
<thead>
<tr>
<th>Region</th>
<th>2011</th>
<th>% Change</th>
<th>2010</th>
<th>% Change</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>North America</td>
<td>$971</td>
<td>13%</td>
<td>$860</td>
<td>(11%)</td>
<td>$970</td>
</tr>
<tr>
<td>Europe</td>
<td>650</td>
<td>6%</td>
<td>614</td>
<td>17%</td>
<td>524</td>
</tr>
<tr>
<td>Asia</td>
<td>303</td>
<td>2%</td>
<td>309</td>
<td>27%</td>
<td>242</td>
</tr>
<tr>
<td>Rest of world</td>
<td>98</td>
<td>24%</td>
<td>79</td>
<td>28%</td>
<td>62</td>
</tr>
<tr>
<td><strong>Total International</strong></td>
<td><strong>1,051</strong></td>
<td><strong>5%</strong></td>
<td><strong>1,002</strong></td>
<td><strong>21%</strong></td>
<td><strong>828</strong></td>
</tr>
<tr>
<td><strong>Total Oncology Systems</strong></td>
<td><strong>$2,022</strong></td>
<td><strong>9%</strong></td>
<td><strong>$1,862</strong></td>
<td><strong>4%</strong></td>
<td><strong>$1,798</strong></td>
</tr>
</tbody>
</table>

### Revenues as a percentage of Oncology Systems revenues

<table>
<thead>
<tr>
<th>Region</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>North America as a percentage of Oncology Systems revenues</td>
<td>48%</td>
<td>46%</td>
<td>54%</td>
</tr>
<tr>
<td>International as a percentage of Oncology Systems revenues</td>
<td>52%</td>
<td>54%</td>
<td>46%</td>
</tr>
</tbody>
</table>
North American Oncology Systems revenues increased in fiscal year 2011 over the fiscal year 2010 primarily due to increases in revenues from sales of our high energy linear accelerators and an increase in service contract revenues, partially offset by a decrease in revenues from our software products. North American Oncology Systems product revenues decreased in fiscal year 2010 over fiscal year 2009 due to decreased sales in most product lines, although the decrease was partially offset by increased service contract revenues.

Varying cycles of higher and lower revenues between the international and North American regions is a historical pattern reflecting regional influences such the effects of government economic stimulus programs, the effects of the recession and slow economic recovery, the effects of the European sovereign debt crisis, uncertainty created by healthcare reform and reductions in Medicare reimbursement rates for radiotherapy and radiosurgery in the United States, and different technology adoption cycles that are consistent with the net order patterns discussed more fully under “Net Orders.”

**X-ray Products Revenues**

<table>
<thead>
<tr>
<th>Revenues by region</th>
<th>2011</th>
<th>% Change</th>
<th>2010</th>
<th>% Change</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>North America</td>
<td>137</td>
<td>7%</td>
<td>128</td>
<td>16%</td>
<td>110</td>
</tr>
<tr>
<td>Europe</td>
<td>97</td>
<td>43%</td>
<td>68</td>
<td>37%</td>
<td>49</td>
</tr>
<tr>
<td>Asia</td>
<td>231</td>
<td>15%</td>
<td>201</td>
<td>24%</td>
<td>162</td>
</tr>
<tr>
<td>Rest of world</td>
<td>4</td>
<td>(30%)</td>
<td>6</td>
<td>(36%)</td>
<td>10</td>
</tr>
<tr>
<td>Total International</td>
<td>332</td>
<td>21%</td>
<td>275</td>
<td>24%</td>
<td>221</td>
</tr>
<tr>
<td>Total X-ray Products</td>
<td>469</td>
<td>16%</td>
<td>403</td>
<td>22%</td>
<td>331</td>
</tr>
</tbody>
</table>

**North America as a percentage of X-ray Products revenues**

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>North America</td>
<td>29%</td>
<td>32%</td>
<td>33%</td>
</tr>
</tbody>
</table>

**International as a percentage of X-ray Products revenues**

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>International</td>
<td>71%</td>
<td>68%</td>
<td>67%</td>
</tr>
</tbody>
</table>

**X-ray Products revenues as a percentage of total revenues**

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>X-ray Products</td>
<td>18%</td>
<td>17%</td>
<td>15%</td>
</tr>
</tbody>
</table>

In fiscal year 2011, the international region and North America both contributed to the increase in X-ray Products revenues over fiscal year 2010, with increased sales of our flat panel products in all international regions and increased sales of our x-ray tube products in Asia and Europe contributing to the increase in the international revenues, and increased sales of our flat panel products that was partially offset by a slight decline in sales of our x-ray tube products accounting for the increase in North American revenues.

The increase in X-ray Products international revenues in fiscal year 2010 over fiscal year 2009 was primarily due to increased revenues from sales of our flat panel products in Europe and Asia and increased revenues from sales of our x-ray tube products in Asia. The increase in X-ray Products North American revenues in fiscal year 2010 over fiscal year 2009 was due to increased revenues from sales of our flat panel products, partially offset by a decline in revenues from sales of our x-ray tube products.

The fluctuation of the U.S. dollar against foreign currencies did not have a material impact on X-ray Products international revenue growth because sales transactions in the X-ray Products business are primarily denominated in U.S. dollars.
**Other Revenues**

Revenues in the “Other” category, which is comprised of SIP, VPT and GTC, increased in fiscal year 2011 over fiscal year 2010 because of an increase in VPT revenues primarily associated with product revenues recognized for the proton therapy system for the Scripps Proton Therapy Center project, partially offset by a decrease in product revenues in our SIP business as a result of slower deployment of products for security and inspection systems. In fiscal year 2011, we recognized revenue of $33 million for the Scripps Proton Therapy Center project. We signed the equipment purchase agreement with CPTC for this project in April 2010 and we did not book this order until September 2011 when the financing was completed. The $33 million revenue we recognized represented progress made on this project since the equipment purchase agreement was signed.

Revenues in our “Other” category increased in fiscal year 2010 over fiscal year 2009 primarily due to an increase in VPT service revenues related to the commissioning of a proton therapy system, partially offset by a decrease in SIP revenue from decreased sales of our Linatron products.

**Gross Margin**

In fiscal year 2011, the increase in total company gross margin percentage over fiscal year 2010 was primarily due to increases in gross margins in Oncology Systems, X-ray Products and SIP. The improvement in SIP gross margin was primarily due to a mix shift toward higher margin products. However, total company gross margin percentage in fiscal year 2011 was negatively impacted by VPT, which began to recognize revenues with a zero profit margin for the Scripps Proton Therapy Center project.

In fiscal year 2010, total company gross margin percentage increased slightly over fiscal year 2009 primarily due to the improvement in X-ray Products and Oncology Systems gross margins, while the gross margin percentage for the “Other” category remained relatively flat. Total product gross margin was 41.6% in fiscal year 2011, compared to 41.8% in fiscal year 2010 and 42.6% in fiscal year 2009. Total service contracts and other gross margin was 50.6% in fiscal year 2011, compared to 49.2% in fiscal year 2010 and 46.4% in fiscal year 2009.

Oncology Systems gross margin in fiscal year 2011 increased 0.5 percentage point over fiscal year 2010 primarily due to increases in both service and product gross margins. Oncology Systems service contract...
gross margin was 51.4% in fiscal year 2011, compared to 51.0% in fiscal year 2010. The increase in service contract gross margin was primarily due to higher service contract volume partially offset by higher product retrofit costs. Oncology Systems product gross margin increased to 42.8% in fiscal year 2011 from 42.6% in fiscal year 2010, primarily due to higher proportion of product revenues from our TrueBeam system (which carries higher gross margins compared with our other linear accelerators).

In fiscal year 2010, Oncology Systems gross margin increased over fiscal year 2009 due to an increase in Oncology Systems service contract gross margin that was mostly offset by a decline in Oncology Systems product gross margin. Oncology Systems product gross margin was 42.6% in fiscal year 2010, compared to 43.7% in fiscal year 2009, primarily due to the geographic mix shift towards a higher proportion of international revenues, which typically have lower margins than revenues from North America, partially offset by a product mix shift toward a greater proportion of higher margin software products. Oncology Systems service contract gross margin was 51.0% in fiscal year 2010, compared to 48.3% in fiscal year 2009. The increase in Oncology Systems service contract gross margin in fiscal year 2010 over fiscal year 2009 was mainly due to higher service contract volume, cost control initiatives and costs associated with quality.

X-ray Products gross margin improved 0.9 percentage point in fiscal year 2011 over fiscal year 2010 primarily due to higher sales volume, product mix shift towards flat panel products (which carry higher gross margins), as well as lower costs of quality for our x-ray tube products. X-ray Products gross margin increased 1.0 percentage point in fiscal year 2010 over fiscal year 2009 primarily due to product mix shift toward higher margin products and higher sales volume.

For the Scripps Proton Therapy Center project, we recognized revenues under the percentage-of-completion method as we can provide a reasonably dependable cost estimate for this project. Although we cannot precisely estimate the project’s final outcome due to certain uncertainties and contingencies, we do not expect a loss on this project. Accordingly, we began to recognize revenues for this project initially under the zero profit margin approach until these uncertainties and contingencies are resolved.

**Research and Development**

<table>
<thead>
<tr>
<th>(Dollars in millions)</th>
<th>Fiscal Years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2011</td>
</tr>
<tr>
<td>Research and development</td>
<td>$171</td>
</tr>
<tr>
<td>As a percentage of total revenues</td>
<td>7%</td>
</tr>
</tbody>
</table>

The $14 million increase in research and development expenses in fiscal year 2011 over fiscal year 2010 was primarily due to increases in expenses of $6 million in Oncology Systems, $5 million in X-ray Products, $3 million in the “Other” category and in Corporate. The $6 million increase in Oncology Systems was mainly due to a $5 million unfavorable currency translation impact, as foreign currency denominated research and development expenses for Oncology Systems were translated into weaker U.S. dollars, as well as an increase in material costs and consulting expenses for product development. The $5 million increase in X-ray Products was attributable primarily to higher development expenses for flat panel and x-ray tube products. The $3 million increase in the “Other” category and in Corporate was primarily due to an increase in expenses for development projects in VPT, partially offset by a decrease in research expenses in SIP.

The $10 million increase in research and development expense for fiscal year 2010 over fiscal year 2009 was driven by increased expenses of $6 million in the “Other” category, $2 million in Oncology Systems and $2 million in X-ray Products. The $6 million increase in the “Other” category was primarily due to an increase in labor expenses, material costs and consulting expenses for research and development projects in VPT and SIP. The $2 million increase in Oncology Systems was primarily attributable to an unfavorable impact when foreign-currency-denominated research and development expenses for
OncoLogy Systems were translated into U.S. dollars in fiscal year 2010 compared to fiscal year 2009, when the U.S. dollar was relatively stronger against foreign currencies. The $2 million increase in X-ray Products was mainly due to higher development expenses for x-ray tube products.

**Selling, General and Administrative**

(Dollars in millions)

<table>
<thead>
<tr>
<th>Fiscal Years</th>
<th>2011</th>
<th>% Change</th>
<th>2010</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selling, general and administrative</td>
<td>$377</td>
<td>13%</td>
<td>$335</td>
<td>(1%)</td>
</tr>
<tr>
<td>As a percentage of total revenues</td>
<td>15%</td>
<td></td>
<td>14%</td>
<td>15%</td>
</tr>
</tbody>
</table>

The $42 million increase in selling, general and administrative expenses for fiscal year 2011 compared to fiscal year 2010 was primarily attributable to: (a) a $14 million net increase in employee-related costs that reflected increased headcount to support our growing business activities; (b) a $10 million net increase in legal expenses and contingent liabilities; (c) unfavorable foreign currency impact of $8 million as the foreign currency denominated selling, general and administrative expenses of our foreign operations were translated into weaker U.S. dollars; (d) a $5 million increase in depreciation and facility expenses primarily related to a Palo Alto, California facility that was placed in service in the first quarter of fiscal year 2011; (e) a loss of $1 million in fiscal year 2011, compared to a gain of $1 million in fiscal year 2010, for hedging balance sheet exposures from our various foreign subsidiaries and business units; (f) a $2 million increase in operating expenses associated with required information technology infrastructure improvements to support our growing business activities; and (g) a $2 million increase in bad debt expense. These increases were partially offset by: (i) income of $4 million, versus a loss of $1 million in fiscal year 2011, recognized on our equity investment in dpiX Holding and (ii) the inclusion in fiscal year 2010 of $3 million related to an October 2009 reduction in force.

The $4 million decrease in selling, general and administrative expenses for fiscal year 2010 compared to fiscal year 2009 was primarily attributable to: (a) a $6 million decrease in expenses related to contingent liabilities in the ordinary course of business; (b) a $5 million net decrease in certain commission and product promotion expenses for our Oncology Systems products and (c) a $5 million decrease in information technology expenses primarily due to the completion of the implementation of our enterprise resource planning system in the second quarter of fiscal year 2009. These decreases were partially offset by: (i) a $4 million increase in employee-related costs primarily related to increased accrued bonuses; (ii) a $3 million expense associated with reduction in force during fiscal year 2010; (iii) a $2 million decrease in net gain from hedging balance sheet exposures from our various foreign subsidiaries and business units; (iv) a $2 million increase in insurance expenses and (v) an unfavorable impact of $2 million when the foreign currency denominated selling, general and administrative expenses of our foreign operations were translated into U.S. dollars in fiscal year 2010 compared to fiscal year 2009, when the U.S. dollar was relatively stronger against foreign currencies.

**Interest Income, Net**

(Dollars in millions)

<table>
<thead>
<tr>
<th>Fiscal Years</th>
<th>2011</th>
<th>% Change</th>
<th>2010</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest income (expense), net</td>
<td>$0.3</td>
<td>120%</td>
<td>$(1.3)</td>
<td>(357%)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$0.5</td>
<td></td>
</tr>
</tbody>
</table>

For fiscal year 2011, the net increase in interest income, net, over fiscal year 2010 was primarily due to lower interest expenses associated with lower levels of long-term debt compared to fiscal year 2010. In fiscal year 2010, the net increase in interest expense, net of interest income, over fiscal year 2009 was primarily due to the lower average interest rates earned on our cash and cash equivalents.

**Taxes on Earnings**

<table>
<thead>
<tr>
<th>Fiscal Years</th>
<th>2011</th>
<th>Change</th>
<th>2010</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective tax rate</td>
<td>30.6%</td>
<td>—</td>
<td>31.0%</td>
<td>1%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>30.2%</td>
</tr>
</tbody>
</table>
The slight decrease in our effective tax rate in fiscal year 2011 from fiscal year 2010 was primarily due to an increase in the benefit from discrete items in fiscal year 2011, including a greater release of liabilities for uncertain tax positions as a result of settlements with taxing authorities and the expiration of the statutes of limitation in various jurisdictions, partially offset by a decrease in the benefit from the foreign rate differential in fiscal year 2011.

The increase in our effective tax rate in fiscal year 2010 from fiscal year 2009 was primarily due to a decrease in the benefit from discrete items in fiscal year 2010, including a smaller release of liabilities for uncertain tax positions as a result of settlements with taxing authorities and the expiration of the statutes of limitation in various jurisdictions, partially offset by an increase in the benefit from the foreign rate differential in fiscal year 2010.

In general, our effective income tax rate differs from the U.S. federal statutory rate primarily because our foreign earnings are taxed at rates that are, on average, lower than the U.S. federal rate, and our domestic earnings are subject to state income taxes. Our future effective tax rate could be adversely affected by having lower earnings than anticipated in countries where we have lower statutory rates and higher earnings than anticipated in countries where we have higher statutory rates, by changes in the valuation of our deferred tax assets or liabilities, and by changes in tax laws or interpretations of those laws. For example, recent proposals would make significant changes U.S. taxation of U.S.-based multinational corporations. Although we cannot predict whether or in what form Congress would enact any such proposals, legislation of this type could have an adverse impact on our effective tax rate. We also expect that our effective tax rate may experience increased fluctuation from period to period under the provisions in ASC 740 related to accounting for uncertainty in income taxes. See Note 14, “Taxes on Earnings” of the Notes to the Consolidated Financial Statements.

**Net Earnings Per Diluted Share**

<table>
<thead>
<tr>
<th>Fiscal Years</th>
<th>2011</th>
<th>% Change</th>
<th>2010</th>
<th>% Change</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net earnings per diluted share</td>
<td>$3.44</td>
<td>16%</td>
<td>$2.96</td>
<td>12%</td>
<td>$2.65</td>
</tr>
</tbody>
</table>

The increase in net earnings from continuing operations per diluted share in fiscal year 2011 over fiscal year 2010 resulted from (i) an increase in total revenues, (ii) an improvement in gross margin, (iii) a decrease in effective tax rate and (iv) a reduction in the number of diluted shares of common stock outstanding due mainly to the various accelerated stock repurchase programs that were executed in fiscal year 2011.

The increase in earnings per diluted share in fiscal year 2010 over fiscal year 2009 resulted from (i) an increase in total revenues, (ii) an improvement in gross margin, (iii) a decrease in our operating expenses as a percent of revenues and (iv) a reduction in the number of diluted shares of common stock outstanding due to stock repurchases (v) partially offset by an increase in effective tax rate.
Oncology Systems net orders grew 8% in fiscal year 2011 over fiscal year 2010, compared to a 10% growth in fiscal year 2010 over fiscal year 2009. On a constant currency basis, Oncology Systems net orders grew 6% in fiscal year 2011 over fiscal year 2010, compared to 8% in fiscal year 2010 over fiscal year 2009.

Both the international region and North America contributed to the growth in Oncology Systems net orders in fiscal year 2011 over fiscal year 2010. The growth in international Oncology Systems net orders in fiscal year 2011 over fiscal year 2010 was primarily due to increased demand for our high energy linear accelerators (including the TrueBeam system) in Europe and the rest of the world region, partially offset by a decline in demand for our high energy linear accelerators in Asia, where a supplemental spending program in Japan contributed to very high order levels in the first half of fiscal year 2010. Growth in demand for our service contracts and software upgrades in all international regions also contributed to the growth in international Oncology Systems net orders in fiscal year 2011 over fiscal year 2010. When measured in constant currency, international Oncology Systems net orders grew 6% in fiscal year 2011 over fiscal year 2010. The growth in North American Oncology Systems net orders in the fiscal year 2011 over fiscal year 2010, helped in part by strong net orders growth in Canada, was primarily due to increased demand for our high energy linear accelerators (including the TrueBeam system) and software upgrades, as well as growth in demand for our service contracts.

Oncology Systems North American net orders increased 4% in fiscal year 2010 over fiscal year 2009, with growth in net orders in the second half of the fiscal year more than offsetting the net order decline in the first half of the fiscal year. Increased demand for our linear accelerators, driven by the TrueBeam system, as well as increased demand for our service contracts, including software service agreements, were the primarily contributors to the Oncology Systems North American net order increase in fiscal year 2010 over fiscal year 2009. Oncology Systems international net orders increased 16%, or 13% on a constant currency basis, in fiscal year 2010 over fiscal year 2009 primarily due to increased demand for our linear accelerators (including the TrueBeam system and UNIQUE) and our software products, in Europe and Asia, as well as growth in demand for our service contracts in all international regions. The overall weaker U.S. dollar against foreign currencies in fiscal year 2010 compared to fiscal year 2009 favorably impacted Oncology Systems international net orders when measured in U.S. dollars.

The trailing 12 months growth in net orders for Oncology Systems for the three immediately prior fiscal quarters ends were: a 10% total increase, with a 14% increase in North America and a 7% increase for the international region, as of July 1, 2011; a 10% total increase, with an 18% increase in North America and a 4% increase for the international region, as of April 1, 2011; a 10% total increase, with an 11% increase in North America and a 10% increase for the international region, as of December 31, 2010. Consistent with the historical pattern, we expect that Oncology Systems net orders will continue to

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### Table of Contents

#### Net Orders

<table>
<thead>
<tr>
<th>Total Net Orders (by segment and region) (Dollars in millions)</th>
<th>2011</th>
<th>% Change</th>
<th>2010</th>
<th>% Change</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Oncology Systems:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North America</td>
<td>$1,038</td>
<td>5%</td>
<td>$985</td>
<td>4%</td>
<td>$949</td>
</tr>
<tr>
<td>Total International</td>
<td>1,211</td>
<td>11%</td>
<td>1,091</td>
<td>16%</td>
<td>942</td>
</tr>
<tr>
<td>Total Oncology Systems</td>
<td>$2,249</td>
<td>8%</td>
<td>$2,076</td>
<td>10%</td>
<td>$1,891</td>
</tr>
<tr>
<td><strong>X-ray Products:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North America</td>
<td>$140</td>
<td>22%</td>
<td>$115</td>
<td>3%</td>
<td>$111</td>
</tr>
<tr>
<td>Total International</td>
<td>343</td>
<td>13%</td>
<td>304</td>
<td>33%</td>
<td>228</td>
</tr>
<tr>
<td>Total X-ray Products</td>
<td>$483</td>
<td>15%</td>
<td>$419</td>
<td>24%</td>
<td>$339</td>
</tr>
<tr>
<td><strong>Other:</strong></td>
<td>$201</td>
<td>100%</td>
<td>$0</td>
<td>(100%)</td>
<td>$151</td>
</tr>
<tr>
<td><strong>Total Net Orders</strong></td>
<td>$2,933</td>
<td>18%</td>
<td>$2,495</td>
<td>5%</td>
<td>$2,381</td>
</tr>
</tbody>
</table>

Oncology Systems net orders grew 8% in fiscal year 2011 over fiscal year 2010, compared to a 10% growth in fiscal year 2010 over fiscal year 2009. On a constant currency basis, Oncology Systems net orders grew 6% in fiscal year 2011 over fiscal year 2010, compared to 8% in fiscal year 2010 over fiscal year 2009.

Both the international region and North America contributed to the growth in Oncology Systems net orders in fiscal year 2011 over fiscal year 2010. The growth in international Oncology Systems net orders in fiscal year 2011 over fiscal year 2010 was primarily due to increased demand for our high energy linear accelerators (including the TrueBeam system) in Europe and the rest of the world region, partially offset by a decline in demand for our high energy linear accelerators in Asia, where a supplemental spending program in Japan contributed to very high order levels in the first half of fiscal year 2010. Growth in demand for our service contracts and software upgrades in all international regions also contributed to the growth in international Oncology Systems net orders in fiscal year 2011 over fiscal year 2010. When measured in constant currency, international Oncology Systems net orders grew 6% in fiscal year 2011 over fiscal year 2010. The growth in North American Oncology Systems net orders in the fiscal year 2011 over fiscal year 2010, helped in part by strong net orders growth in Canada, was primarily due to increased demand for our high energy linear accelerators (including the TrueBeam system) and software upgrades, as well as growth in demand for our service contracts.

Oncology Systems North American net orders increased 4% in fiscal year 2010 over fiscal year 2009, with growth in net orders in the second half of the fiscal year more than offsetting the net order decline in the first half of the fiscal year. Increased demand for our linear accelerators, driven by the TrueBeam system, as well as increased demand for our service contracts, including software service agreements, were the primarily contributors to the Oncology Systems North American net order increase in fiscal year 2010 over fiscal year 2009. Oncology Systems international net orders increased 16%, or 13% on a constant currency basis, in fiscal year 2010 over fiscal year 2009 primarily due to increased demand for our linear accelerators (including the TrueBeam system and UNIQUE) and our software products, in Europe and Asia, as well as growth in demand for our service contracts in all international regions. The overall weaker U.S. dollar against foreign currencies in fiscal year 2010 compared to fiscal year 2009 favorably impacted Oncology Systems international net orders when measured in U.S. dollars.

The trailing 12 months growth in net orders for Oncology Systems for the three immediately prior fiscal quarters ends were: a 10% total increase, with a 14% increase in North America and a 7% increase for the international region, as of July 1, 2011; a 10% total increase, with an 18% increase in North America and a 4% increase for the international region, as of April 1, 2011; a 10% total increase, with an 11% increase in North America and a 10% increase for the international region, as of December 31, 2010. Consistent with the historical pattern, we expect that Oncology Systems net orders will continue to
experience regional fluctuations. In addition, the availability of government programs that stimulate the purchase of healthcare products, such as the one in place in 2010 in Japan, could affect the demand for our products from period to period, and could therefore make it difficult to compare our financial results.

X-ray Products net orders grew 15% in fiscal year 2011 over fiscal year 2010, compared to 24% in fiscal year 2010 over fiscal year 2009. In fiscal year 2011, the increase in X-ray Products net orders over fiscal year 2010 was primarily due to an increase in both North American and international net orders. Increased demand for both the x-ray tube products and the flat panel products contributed the fiscal year 2011 increase in North American X-ray Products net orders. The fiscal year 2011 increase in international X-ray Products net orders was primarily due to increased demand for x-ray tube products in Asia and Europe and increased demand for flat panel products in Europe, partially offset by a decline in net orders for flat panel products in Asia. The growth in X-ray Products net orders in fiscal year 2010 was primarily due to increased demand for flat panel products, especially our radiographic flat panels, in North America, Europe and Asia, as well as increased demand for our x-ray tubes products in Asia.

Net orders in the “Other” category increased $201 million in fiscal year 2011 from fiscal year 2010 with VPT recording the $88 million order from CPTC for the Scripps Proton Therapy Center project in the fourth quarter of fiscal year 2011 and cancelling the $62 million proton therapy system order from Skandion Kliniken in fiscal year 2010. The increase in net orders in the “Other” category in fiscal year 2011 over fiscal year 2010 was also attributable to a $51 million increase in net orders in SIP primarily due to i) increased demand for Linatron x-ray accelerators for cargo screening and border protection and ii) a $21 million order from U.S. Customs and Border Protection for five of our IntellX cargo screening systems.

Net orders in the “Other” category declined $151 million in fiscal year 2010 over fiscal year 2009 primarily because VPT booked the $62 million Skandion Kliniken order in fiscal year 2009 and then cancelled in fiscal year 2010 without booking any further orders. SIP also experienced a decrease in net orders in fiscal year 2010 compared to fiscal year 2009 as this business was negatively impacted by bid award challenges among competitors for a large government project in North America.

Orders in any period may not be directly correlated to the level of revenues in any particular future quarter or period since the timing of revenue recognition will vary significantly based on the delivery requirements of individual orders, acceptance schedules and the readiness of individual customer sites for installation of our products. Moreover, certain types of orders, such as orders for software or newly introduced products in our Oncology Systems segment, typically take more time from order to completion of installation and acceptance than hardware or older products.

Discontinued Operations

In the fourth quarter of fiscal year 2008, we approved a plan to sell Research Instruments to focus the business that we acquired from ACCEL exclusively on the development of our VPT business. The sale of Research Instruments was completed in the second quarter of fiscal year 2009. Research Instruments has been classified as a discontinued operation in our Consolidated Statements of Earnings for all periods presented.

In fiscal year 2010, we recognized an additional loss of $7.1 million for additional cost to settle one customer contract and estimated costs to complete and settle the other customer contract, both of which were related to Research Instruments. In fiscal year 2011, the Company recognized a loss of $9.7 million for additional costs to settle the remaining customer contract. These contracts had been accounted for under the percentage-of-completion method, under which revenues and costs of sales are adjusted to reflect changes in estimated costs to complete the contracts. Including the additional loss recognized for the remaining contract, the total loss from discontinued operations for fiscal year 2011 was $9.7 million, less applicable income tax of zero. Including the additional loss recognized for the two contracts, total
losses of Research Instruments for fiscal year 2010 was $7.1 million, less applicable income tax of zero. Loss from discontinued operations for fiscal year 2009 was $12.5 million, less applicable income tax of zero. In fiscal year 2009, loss from discontinued operations included a loss of $8.1 million on the disposal of Research Instruments. Total revenues of Research Instruments, reported in discontinued operations, for fiscal years 2011, 2010 and 2009 were zero, $(3.6) million and $9.8 million, respectively. As of September 30, 2011, we had no remaining obligation related to Research Instruments. See Note 18, “Discontinued Operations” to the Notes to the Consolidated Financial Statements for a detailed discussion.

**Backlog**

Including the backlog related to the Scripps Proton Therapy Center project, our backlog at September 30, 2011 was $2.5 billion, which is an increase of 15% over the backlog at October 1, 2010. Our Oncology Systems backlog at September 30, 2011 was 11% higher than the backlog at October 1, 2010, which reflects a 21% increase for the international regions and a 4% increase for North America.

**Liquidity and Capital Resources**

Liquidity is the measurement of our ability to meet potential cash requirements, including ongoing commitments to repay borrowings, acquire businesses, repurchase VMS stock, and fund continuing operations. Our sources of cash have included operations, borrowings, option exercises and employee stock purchases (although no purchases under our employee stock purchase plan were made during fiscal year 2010) and interest income. Our cash usage is actively managed on a daily basis to ensure the maintenance of sufficient funds to meet our needs. Because Research Instruments’ cash flows were not material for any period presented, we have not segregated them from continuing operations on our Consolidated Statements of Cash Flows and the discussion herein.

**Cash and Cash Equivalents**

The following table summarizes our cash and cash equivalents:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>September 30, 2011</th>
<th>October 1, 2010</th>
<th>Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 564</td>
<td>$ 520</td>
<td>$ 44</td>
</tr>
</tbody>
</table>

Our cash and cash equivalents increased $44 million from $520 million at October 1, 2010 to $564 million at September 30, 2011. The increase in cash and cash equivalents in fiscal year 2011 was due primarily to $472 million of cash generated from operating activities, $161 million of cash from net borrowings under our credit facilities, $138 million of cash provided by stock option exercises and $23 million of cash provided by the excess tax benefits from share-based compensation. These increases were partially offset by aggregate payments of $611 million in connection with three accelerated share repurchase agreements and for shares repurchased in the open market, $71 million of capital expenditures, $19 million used for loans to CPTC for financing the construction and startup operations of the Scripps Proton Therapy Center, $15 million for an investment in a minority equity interest in Augmenix plus an exclusive option to purchase the remaining equity interest, $15 million used to satisfy employee tax withholding requirements for employees who tendered VMS stock upon vesting of restricted common stock and restricted stock units, $8 million used for the acquisition of all of the outstanding capital stock of a supplier of devices for delivery of brachytherapy treatments and $7 million used for the repayment of bank borrowings. In addition, foreign currency exchange rate changes in fiscal year 2011 increased cash and cash equivalents by $1 million.

At September 30, 2011, we had approximately $15 million or 3%, of total cash and cash equivalents in the United States. Approximately $549 million, or 97%, of total cash and cash equivalents was held abroad and could be subject to additional taxation if it were repatriated to the United States. As of September 30, 2011, most of our cash and cash equivalents that were held abroad were in U.S. dollars and were primarily held as bank deposits. Because our cash levels in the United States are relatively low,
we have used our credit facilities to meet our cash needs from time to time and expect to continue to do so in the future. Borrowings under our credit facilities may be used for working capital, capital expenditures, stock repurchases, acquisitions and other corporate purposes. We expect to either negotiate a new credit facility or extend our existing credit facility when it expires in June 2012. See further discussion of our credit facility under “Cash Flows.”

**Cash Flows**

Our primary cash inflows and outflows for fiscal years 2011, 2010 and 2009 were as follows:

- We generated net cash from operating activities of $472 million in fiscal year 2011, compared to $460 million and $305 million in fiscal years 2010 and 2009, respectively.

The $12 million increase in net cash from operating activities during fiscal year 2011 compared to fiscal year 2010 was driven primarily by an increase of $39 million in net earnings and an increase in non-cash items of $5 million, partially offset by a net change of $32 million in operating assets and liabilities (working capital items).

The major contributors to the net change in working capital items in fiscal year 2011 were accounts receivable, inventories, accounts payable and advance payments from customers as follows:

- Accounts receivable increased $42 million due to higher revenues and timing of collections.
- Inventories increased by $42 million due to anticipated customer demands for products in fiscal year 2012 mainly in Oncology Systems and X-ray Products.
- Accounts payable increased by $36 million due to timing of vendor payments, increased purchases due to the overall growth of our operations and payment due for settlement of a contract.
- Advance payments from customers increased by $23 million due to increased orders.

The $155 million increase in net cash from operating activities during fiscal year 2010 compared to fiscal year 2009 was driven primarily by a net change of $63 million in operating assets and liabilities (working capital items), an increase in non-cash items of $51 million and an increase of $41 million in net earnings.

The major contributors to the net change in working capital items in fiscal year 2010 were inventories and advance payments from customers as follows:

- Inventories increased by $53 million due to anticipated customer demands for products in fiscal year 2011 in Oncology Systems, X-ray Products and VPT.
- Advance payments from customers increased by $49 million due to increased orders, as well as receipt of a down payment for a proton therapy system not yet recognized in Net Orders as of the end of the third quarter.

We expect that cash provided by operating activities may fluctuate in future periods as a result of a number of factors, including fluctuations in our operating results, timing of product shipments.
and customer acceptance, accounts receivable collections, inventory management, and the timing and amount of tax and other payments. See Item 1A, “Risk Factors.”

- Investing activities used $118 million of net cash in fiscal year 2011, compared to $75 million in fiscal year 2010 and $78 million in fiscal year 2009. Cash used for purchases of property, plant and equipment was $71 million in fiscal year 2011, compared to $68 million in fiscal year 2010 and $63 million in fiscal years 2009. During fiscal year 2011, we used $19 million for loans to CPTC, paid $15 million to Augmenix for a minority equity interest plus an exclusive option to purchase the remaining equity interest of Augmenix and paid cash of $8 million for the acquisition of all of the outstanding capital stock of a supplier of devices for delivery of brachytherapy treatment. In fiscal year 2009, we made an additional net loan advance of $6 million to dpiX.

- Financing activities used net cash of $311 million in fiscal year 2011, compared to $422 million in fiscal year 2010 and $71 million in fiscal year 2009. In fiscal year 2011, we paid an aggregate of $611 million in connection with three accelerated share repurchase agreements and for shares repurchased in the open market. In fiscal year 2010, we paid an aggregate of $520 million in connection with an accelerated share repurchase agreement and for shares repurchased in the open market. In fiscal year 2009, we used $101 million for the repurchases of VMS common stock. In fiscal years 2011, 2010 and 2009, we used $7 million, $9 million and $8 million, respectively, to repay bank borrowings. Cash used for financing activities in fiscal years 2011, 2010 and 2009 also includes $15 million, $8 million and $3 million (the value of withheld shares), respectively, for tendered VMS common stock to satisfy employee tax withholding requirements upon vesting of restricted common stock and restricted stock units. These uses were partially offset by cash proceeds from employee stock option exercises and employee stock purchases of $138 million, $84 million and $28 million in fiscal years 2011, 2010 and 2009 respectively, as well as cash provided by excess tax benefits from share-based compensation of $23 million in fiscal year 2011, $15 million in fiscal year 2010 and $10 million in fiscal year 2009. In fiscal years 2011, 2010 and 2009, we also borrowed a net amount of $161 million, $16 million and $4 million, respectively, from our credit facilities.

We expect our capital expenditures, which typically represent construction and/or purchases of facilities, manufacturing equipment, office equipment and furniture and fixtures, as well as capitalized costs related to the implementation of software applications, will be approximately 3.0% of revenues in fiscal year 2012. As further described in Note 16, “Variable Interest Entity” of the Notes to the Consolidated Financial Statements, we are participating in a $165 million loan facility to CPTC, under which we have committed to provide $115 million to finance the construction and start-up operations of the Scripps Proton Therapy Center. As of September 30, 2011, we have loaned $19.2 million to CPTC and we expect the remaining $96.1 million will continued to be drawn down by CPTC through 2014. We expect to use our cash abroad to meet funding requirements under this loan facility. We may sell all or a portion of our participation in this loan facility before the end of the drawdown period in 2014. Upon the sale of all or a portion of this loan facility, we will not be required to make further loan advances for the portion of the facility that is sold.

We have a $300 million credit facility with Bank of America, N.A. (“BoA”), which was amended and restated in November 2008 and then again amended in July 2009, August 2010 and August 2011. This credit facility, as amended to date, is referred to as the “Amended BoA Credit Facility.” A portion of the Amended BoA Credit Facility is collateralized with a pledge of stock of certain of VMS’s present and future subsidiaries that are deemed to be material subsidiaries. As of September 30, 2011, VMS has pledged to BoA 65% of the voting shares that it holds in Varian Medical Systems Nederland B.V., a wholly-owned subsidiary. Under the Amended BoA Credit Facility, VMS’s Japanese subsidiary (“VMS KK”) can borrow up to 2.7 billion Japanese Yen as part of the overall credit facility (the “Japanese Line of Credit”). At any time amounts are outstanding under the Japanese Line of Credit, the full borrowing capacity is deemed committed for use in Japan and therefore the maximum amount VMS can otherwise
borrow under the Amended BofA Credit Facility will be reduced by $35 million to $265 million. VMS guarantees the payment of the outstanding balance under the Japanese Line of Credit.

The Amended BofA Credit Facility may be used for: working capital; capital expenditures; permitted acquisitions; and other lawful corporate purposes. Borrowings under the Japanese Line of Credit can be used by VMS KK for refinancing certain intercompany debts, working capital, capital expenditures and other lawful corporate purposes. Borrowings under the Amended BofA Credit Facility (outside of the Japanese Line of Credit) accrue interest either: (i) based on LIBOR plus a margin of 0.75% to 1.25% based on a leverage ratio involving funded indebtedness and earnings before interest, taxes, depreciation and amortization (“EBITDA”) or (ii) based upon a base rate of either the federal funds rate plus 0.5% or BofA’s announced prime rate, whichever is greater, minus a margin of 0.5% to 0% based on a leverage ratio involving funded indebtedness and EBITDA (depending upon our instructions to BofA). We may select borrowing periods of one, two, three or six months for advances based on the LIBOR rate. Interest rates on advances based on the base rate are adjustable daily. Under the Amended BofA Credit Facility, we pay commitment fees at an annual rate of 0.2% to 0.3% based on a leverage ratio involving funded indebtedness and EBITDA. Borrowings under the Japanese Line of Credit accrue interest at the basic loan rate announced by the Bank of Japan plus a margin of 1.25% to 1.50% based on a leverage ratio involving funded indebtedness and EBITDA. The Amended BofA Credit Facility, as well as the Japanese Line of Credit, will expire on June 30, 2012, if not extended by mutual agreement of VMS and BofA. We expect to either negotiate a new credit facility or extend our existing credit facility when it expires.

As of September 30, 2011, $181 million was outstanding under the Amended BofA Credit Facility with a weighted average interest rate of 1.05% and none of which was outstanding under the Japanese Line of Credit. The Amended BofA Credit Facility contains customary affirmative and negative covenants for facilities of this type. We have also agreed to maintain certain financial covenants relating to: (i) leverage ratios involving funded indebtedness and EBITDA; (ii) liquidity; and (iii) consolidated assets. As of September 30, 2011, we were in compliance with all covenants. See also Note 8 “Credit Facilities” to the Consolidated Financial Statements for a discussion regarding the Amended BofA Credit Facility.

The following table provides additional information regarding our short-term borrowings:

<table>
<thead>
<tr>
<th>(Dollars in millions)</th>
<th>Fourth Quarter of Fiscal Year</th>
<th>Fiscal Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount outstanding (at end of period)</td>
<td>$ 181</td>
<td>$ 181</td>
</tr>
<tr>
<td>Weighted average interest rate (at end of period)</td>
<td>1.05%</td>
<td>1.05%</td>
</tr>
<tr>
<td>Average amount outstanding (during period)</td>
<td>140</td>
<td>60</td>
</tr>
<tr>
<td>Weighted average interest rate (during period)</td>
<td>2.02%</td>
<td>2.07%</td>
</tr>
<tr>
<td>Maximum month-end amount outstanding during period</td>
<td>$ 239</td>
<td>$ 239</td>
</tr>
</tbody>
</table>

Our liquidity is affected by many factors, some of which result from the normal ongoing operations of our business and some of which arise from uncertainties and conditions in the United States and global economies. Although our cash requirements will fluctuate as a result of the shifting influences of these factors, we believe that existing cash and cash equivalents and cash to be generated from operations and current or future credit facilities will be sufficient to satisfy anticipated commitments for capital expenditures and other cash requirements for at least the next 12 months. We currently anticipate that we will continue to utilize our available liquidity and cash flows from operations, as well as borrowed funds, to make strategic acquisitions, invest in the growth of our business, invest in advancing our systems and processes, repurchase VMS common stock and fund our loan commitment to CPTC.

Total debt as a percentage of total capital increased to 13.7% at September 30, 2011 from 3.3% at October 1, 2010 primarily due to increased borrowings under our credit facility. The ratio of current assets to current liabilities decreased to 1.65 to 1 at September 30, 2011 from 1.86 to 1 at October 1, 2010.
Days Sales Outstanding

Trade accounts receivable DSO were 80 days at September 30, 2011 compared to 82 days at October 1, 2010. Our accounts receivable and DSO are impacted by a number of factors, including primarily: the timing of product shipments, collections performance, payment terms, and the mix of revenues from different regions. As of September 30, 2011, less than 1% of our accounts receivable balance was related to customer contracts with extended payment terms of more than one year.

Stock Repurchase Program

During fiscal year 2011, 2010 and 2009, we repurchased 9,028,033 shares, 9,788,249 shares and 2,248,000 shares, respectively, of VMS common stock under various authorizations by VMS’s Board of Directors. The repurchased shares include shares of VMS common stock repurchased under various accelerated share repurchase agreements. Aggregate cash payments in connection with the various accelerated share repurchase agreements (as further discussed below) and for shares repurchased in the open market totaled $611 million, $520 million and $101 million in fiscal years 2011, 2010 and 2009, respectively. All shares that were repurchased have been retired.

In March 2011, we settled an accelerated share repurchase agreement executed on August 24, 2010 with BofA (the “August 2010 Repurchase Agreement”). Pursuant to the August 2010 Repurchase Agreement, we initially paid to BofA $225 million and BofA delivered 3,888,249 shares of VMS common stock, representing approximately 90% of the shares expected to be repurchased. Under the terms of the August 2010 Repurchase Agreement, the specific number of shares that we ultimately repurchased was to be based on the volume weighted average share price of VMS common stock during the repurchase period, less a discount, such that we might be entitled to receive additional shares of VMS common stock from BofA or we might be required to deliver VMS shares or, at our option, make a cash payment to BofA. The repurchase period ended on February 23, 2011 and we made a cash payment of $26.1 million to settle this contract without receiving or delivering additional VMS shares in March 2011.

On February 23, 2011, we entered into another accelerated share repurchase agreement with BofA (the “February 2011 Repurchase Agreement”). Pursuant to the February 2011 Repurchase Agreement, we paid to BofA $280 million and BofA delivered 3,547,474 shares of VMS common stock, representing approximately 85% of the shares expected to be repurchased. Under the terms of the February 2011 Repurchase Agreement, the specific number of shares that we ultimately repurchased was to be based on the volume weighted average share price of VMS common stock during the repurchase period, less a discount. In June 2011, BofA accelerated the end of the repurchase period and we received additional 630,921 shares of VMS common stock, with a then market value of approximately $41.3 million, upon the settlement of the February 2011 Repurchase Agreement.

On August 25, 2011, we entered into another accelerated share repurchase agreement with BofA (the “August 2011 Repurchase Agreement”). Pursuant to the August 2011 Repurchase Agreement, the Company paid to BofA $250 million and BofA delivered 3,849,638 shares of VMS common stock, representing approximately 85% of the shares expected to be repurchased. Under the terms of the August 2011 Repurchase Agreement, the specific number of shares that the Company ultimately will repurchase is based on the volume weighted average share price of VMS common stock during the repurchase period, less a discount. The repurchase period will end on February 21, 2012, however beginning on November 23, 2011 BofA has the right to accelerate the end of the repurchase period. The August 2011 Repurchase Agreement provides that at the completion of the repurchase period, depending on the volume weighted average share price of VMS common stock during the repurchase period, the Company may be entitled to receive additional shares of VMS common stock from BofA or the Company may be required to deliver VMS shares or, at its option, make a cash payment to BofA.

In February 2011, the VMS Board of Directors authorized the repurchase of 12 million shares of VMS common stock through the end of fiscal year 2012. As of September 30, 2011, 7,433,718 shares of VMS common stock remained available for repurchase under this repurchase authorization. Shares may be
repurchased in the open market, in privately negotiated transactions (including accelerated share repurchases) or under Rule 10b5-1 share repurchase plans, and may be made from time to time or in one or more blocks.

**Contractual Obligations**

The following summarizes our contractual obligations as of September 30, 2011 and the effect such obligations are expected to have on our liquidity and cash flows in future periods:

<table>
<thead>
<tr>
<th>Payments Due By Period</th>
<th>Fiscal Year 2012</th>
<th>Fiscal Years 2013 - 2014</th>
<th>Fiscal Years 2015 - 2016</th>
<th>Beyond</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Short-term borrowings(1)</td>
<td>$ 181.4</td>
<td>$ —</td>
<td>$ —</td>
<td>$ —</td>
<td>$181.4</td>
</tr>
<tr>
<td>Long term debt(2)</td>
<td>9.9</td>
<td>6.2</td>
<td>—</td>
<td>—</td>
<td>16.1</td>
</tr>
<tr>
<td>Interest obligation on long term debt</td>
<td>0.8</td>
<td>0.7</td>
<td>—</td>
<td>—</td>
<td>1.5</td>
</tr>
<tr>
<td>Loan facility to CPTC(3)</td>
<td>19.2</td>
<td>76.9</td>
<td>—</td>
<td>—</td>
<td>96.1</td>
</tr>
<tr>
<td>Acquisition of Calpyso(4)</td>
<td>10.0</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>10.0</td>
</tr>
<tr>
<td>Operating leases(5)</td>
<td>15.2</td>
<td>20.1</td>
<td>8.8</td>
<td>3.9</td>
<td>48.0</td>
</tr>
<tr>
<td>Purchase commitments(6)</td>
<td>46.0</td>
<td>21.0</td>
<td>—</td>
<td>—</td>
<td>67.0</td>
</tr>
<tr>
<td>Defined benefit pension plans(7)</td>
<td>9.5</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>9.5</td>
</tr>
<tr>
<td>Post-retirement benefit plan(8)</td>
<td>0.5</td>
<td>1.0</td>
<td>1.1</td>
<td>2.4</td>
<td>5.0</td>
</tr>
<tr>
<td><strong>Total(9)</strong></td>
<td><strong>$ 292.5</strong></td>
<td><strong>$ 125.9</strong></td>
<td><strong>$ 9.9</strong></td>
<td><strong>$ 6.3</strong></td>
<td><strong>$434.6</strong></td>
</tr>
</tbody>
</table>

(1) As of September 30, 2011, short-term borrowings in this amount were outstanding under the Amended BofA Credit Facility with a weighted average interest rate of 1.05%. See a detailed discussion of our credit facilities in Note 8, “Credit Facilities” of the Notes to the Consolidated Financial Statements.

(2) Long-term debt, including current maturities, decreased $7.3 million from October 1, 2010 due to principal repayments. The fixed interest rates on the outstanding debt on this date ranged from 6.70% to 7.34% with a weighted average interest rate of 6.84%. As of September 30, 2011, land and buildings with a carrying amount of $7.8 million were pledged as collateral against certain loans we assumed related to purchases of land and buildings in Las Vegas. For further discussion regarding long-term debt, see Note 7, “Long-term Debt” of the Notes to the Consolidated Financial Statements.

(3) As further described in Note 16, “Variable Interest Entity” of the Notes to the Consolidated Financial Statements, we participate, through our Swiss subsidiary, in a $165 million loan facility to CPTC, under which we committed to loan up to $115 million, to finance the construction and startup operations of the Scripps Proton Therapy Center. As of September 30, 2011, we had loaned $19 million to CPTC and we expect CPTC to continue to draw down this facility through the construction and initial operation period. Amounts presented represent the estimated timing of loan drawdowns as of September 30, 2011, which may change due to changes in construction progress and other factors. We expect to use our cash abroad to meet funding requirements under this loan facility. We may sell all or a portion of our participation in this loan facility before the end of the drawdown period in 2014. Upon the sale of all or a portion of this facility, we will not be required to make further loan advances for the portion of the facility that is sold.

(4) In October 2011, we acquired Calypso, a privately-held supplier of specialized products and software for real-time tumor tracking and motion management during radiosurgery and radiotherapy, for approximately $10 million, which is reflected as a payment obligation under “Fiscal Year 2012” in the above table. We agreed to make additional contingent considerations upon achievement of certain milestones in fiscal years 2012, 2013 and 2014, which are not reflected in the above table.
Operating leases include future minimum lease payments under all our noncancelable operating leases as of September 30, 2011.

As further described in Note 10, “Commitments and Contingencies”, under a commercial agreement, we agreed to make guaranteed prepayments to a third party for orders of their products that the Company will resell to end user customers.

As further described in Note 11, “Retirement Plans” of the Notes to the Consolidated Financial Statements, as of September 30, 2011, our defined benefit pension plans were underfunded by $35 million. Due to the impact of future plan asset performance, changes in interest rates and other economic and demographic assumptions the potential for changes in legislation in the United States and other foreign jurisdictions, we are not able to reasonably estimate the timing and amount of contributions to fund its defined benefit pension plans beyond the next fiscal year.

As further described in Note 11, “Retirement Plans” of the Notes to the Consolidated Financial Statements, as of September 30, 2011, our post-retirement benefit plan had an estimated total benefit obligation of $5.9 million. Due to changes in health care cost trend rates, mortality rates of plan participants, and the potential for us to change the type of health care plans offered or the level of contributions from plan participants, we are not able to reasonably estimate the timing and amount of contributions to fund our post-retirement benefit plan beyond fiscal year 2021.

The following items are not included in the table above:

- Long-term income taxes payable includes the liability for uncertain tax positions, including interest and penalties, and may also include other long-term tax liabilities. As of September 30, 2011, our liability for uncertain tax positions was $44.8 million and we do not anticipate payment of these amounts in the next 12 months. We are unable to reliably estimate the timing of future payments related to uncertain tax positions; therefore, the liability for uncertain tax positions has been excluded from the table above. See a detailed discussion in Note 14, “Taxes on Earnings” of the Notes to the Consolidated Financial Statements.

- In February 2009, we agreed to loan an aggregate amount of $14 million to dpiX. As of September 30, 2011, we had loaned $8.8 million to dpiX and had outstanding commitment to loan an additional $5.2 million under this agreement. We do not know the timing of the funding of the remaining $5.2 million. See detailed discussion in Note 6, “Related Party Transactions” of the Notes to the Consolidated Financial Statements.

- As further described in Note 10, “Commitments and Contingencies” of the Notes to the Consolidated Financial Statements, as of September 30, 2011, we accrued $12.7 million for environmental remediation liabilities. The amount accrued represents estimates of anticipated future costs and the timing and amount of actual future environmental remediation costs may vary as the scope of our obligations become more clearly defined.

- As discussed above under “Share Repurchase Program,” we entered into the August 2011 Repurchase Agreement with BofA to repurchase $250 million of VMS common stock on August 25, 2011. As of September 30, 2011, we received 3,849,638 shares of VMS common stock under the August 2011 Repurchase Agreement. The specific number of shares that we ultimately will repurchase under the Repurchase Agreement will be based on the volume weighted average share price of VMS common stock during the repurchase period, which will end between November 23, 2011 and February 21, 2012. We may be entitled to receive additional shares of VMS common stock from BofA or we may be required, at its option, to deliver VMS shares or make a cash payment to BofA.
Contingencies

Environmental Remediation Liabilities

For a discussion of environmental remediation liabilities, see Note 10, “Commitments and Contingencies—Environmental Remediation Liabilities” of the Notes to the Consolidated Financial Statements, which discussion is incorporated herein by reference.

Acquisition-Related Commitments/Obligations

When we acquired ACCEL in January 2007, ACCEL was involved in a contract-related lawsuit, which we settled by agreeing to perform commissioning services for a proton therapy system for a fixed price contract (the “Fixed Price Contract”). As of October 2, 2009, we had a loss accrual of €7.6 million related to the Fixed Price Contract. In the first quarter of fiscal year 2010, we entered into a new contract (the “New Contract”) to perform certain services for a fixed price. The balance of the loss accrual related to this contingency (the New Contract) was €1.0 million as of September 30, 2011. If the actual costs related to the contingency exceed the estimated amount or if the estimated loss increases, the variances will be recognized in the Consolidated Statements of Earnings in the periods in which these variances arise.

Other Matters

From time to time, we are a party to or otherwise involved in legal proceedings, claims and government inspections or investigations and other legal matters both in and outside the United States, arising in the ordinary course of our business or otherwise. Such matters are subject to many uncertainties and outcomes are not predictable with assurance. We accrue amounts, to the extent they can be reasonably estimated, that we believe are adequate to address any liabilities related to legal proceedings and other loss contingencies that we believe will result in a probable loss. While the outcome of these matters is currently not determinable, we do not expect that the ultimate costs to resolve these matters will have a material adverse effect on our consolidated financial position, results of operations or cash flows. However, it is possible that a legal or other proceeding brought against us could have an impact of this nature.

Off-Balance Sheet Arrangements

In conjunction with the sale of our products in the ordinary course of business, we provide standard indemnification of business partners and customers for losses suffered or incurred for property damages, death and injury and for patent, copyright or any other intellectual property infringement claims by any third parties with respect to our products. The terms of these indemnification arrangements are generally perpetual. Except for losses related to property damages, the maximum potential amount of future payments we could be required to make under these arrangements is unlimited. As of September 30, 2011, we have not incurred any significant costs since the Spin-offs to defend lawsuits or settle claims related to these indemnification arrangements. As a result, we believe the estimated fair value of these arrangements is minimal.

We have entered into indemnification agreements with our directors and officers and certain of our employees that serve as officers or directors of our foreign subsidiaries that may require us to indemnify our directors and officers and those certain employees against liabilities that may arise by reason of their status or service as directors or officers, and to advance their expenses incurred as a result of any legal proceeding against them as to which they could be indemnified.

Recent Accounting Pronouncements

In September 2011, the Financial Accounting Standards Board (“FASB”) amended ASC 350, “Intangibles—Goodwill and Other.” This amendment is intended to simplify how an entity tests goodwill for impairment and will allow an entity to first assess qualitative factors to determine whether it is
necessary to perform the two-step quantitative goodwill impairment test. An entity no longer will be required to calculate the fair value of a reporting unit unless the entity determines, based on a qualitative assessment, that it is more likely than not that the reporting unit’s fair value is less than its carrying amount. The amendment will be effective for us beginning in the first quarter of fiscal 2013 and early adoption is permitted. We are currently assessing the potential impact of this amendment on our consolidated financial position, results of operations and cash flows.

In June 2011, the FASB amended ASC 220, “Presentation of Comprehensive Income.” This amendment will require companies to present the components of net income and other comprehensive income either as one continuous statement or as two consecutive statements. It eliminates the option to present components of other comprehensive income as part of the statement of changes in stockholders’ equity. The amended guidance, which must be applied retroactively, will be effective for us in the first quarter of fiscal year 2013. The adoption of this amendment concerns disclosure only and we do not expect it to have an impact on our consolidated financial position, results of operations or cash flows.

In May 2011, the FASB amended ASC 820, “Fair Value Measurement.” This amendment is intended to result in convergence between GAAP and International Financial Reporting Standards requirements for measurement of and disclosures about fair value. This guidance clarifies the application of existing fair value measurements and disclosures, and changes certain principles or requirements for fair value measurements and disclosures. The amendment will be effective for us in the second quarter of fiscal year 2012. We are currently assessing the potential impact, if any, this amendment may have on our consolidated financial position, results of operations and cash flows.

**Item 7A. Quantitative and Qualitative Disclosures about Market Risk**

We are exposed to three primary types of market risks: credit risk, foreign currency exchange rate risk and interest rate risk.

**Credit Risk**

We are exposed to credit loss in the event of nonperformance by counterparties on the foreign currency forward contracts used in hedging activities. These counterparties are large international and regional financial institutions and to date, no such counterparty has failed to meet its financial obligation to us under such contracts. In addition, cash and cash equivalents held with financial institutions may exceed the Federal Deposit Insurance Corporation insurance limits or similar limits in foreign jurisdictions. We also may need to rely on the credit facility described below under “Interest Rate Risk”. Our access to our cash and cash equivalents or ability to borrow could be reduced if one or more financial institutions with which we have deposits or from which we borrow should fail or otherwise be adversely impacted by conditions in the financial or credit markets. Conditions such as those we experienced as a result of the economic downturn of 2008 and 2009 and accompanying contraction in the credit markets heighten these risks.

**Foreign Currency Exchange Rate Risk**

As a global entity, we are exposed to movements in foreign currency exchange rates. These exposures may change over time as business practices evolve. Adverse foreign currency rate movements could have a material negative impact on our financial results. Our primary exposures related to foreign currency denominated sales and purchases are in Europe, Asia, Australia and Canada.

We have many transactions denominated in foreign currencies and address certain of those financial exposures through a risk management program that includes the use of derivative financial instruments. We sell products throughout the world, often in the currency of the customer’s country, and may hedge certain of these larger foreign currency transactions when they are not transacted in the subsidiaries’ functional currency or in U.S. dollars. The foreign currency sales transactions that fit our risk management policy criteria are hedged with forward contracts. We may use other derivative instruments
in the future. We enter into foreign currency forward contracts primarily to reduce the effects of fluctuating foreign currency exchange rates. We do not enter into forward contracts for speculative or trading purposes. The forward contracts range from one to twelve months in maturity.

We also hedge the balance sheet exposures from our various foreign subsidiaries and business units. We enter into foreign currency forward contracts to minimize the short-term impact of currency fluctuations on assets and liabilities denominated in currencies other than the U.S. dollar functional currency.

The notional amounts of forward contracts are not a measure of our exposure. The fair value of forward contracts generally reflects the estimated amounts that we would receive or pay to terminate the contracts at the reporting date, thereby taking into account and approximating the current unrealized and realized gains or losses of the open contracts. A move in foreign currency exchange rates would change the fair value of the contracts, and the fair value of the underlying exposures hedged by the contracts would change in a similar offsetting manner.

The notional values and the weighted average contractual foreign currency exchange rates of our sold and purchased forward exchange contracts outstanding at September 30, 2011 were as follows:

<table>
<thead>
<tr>
<th>Currency</th>
<th>Notional Value Sold</th>
<th>Notional Value Purchased</th>
<th>Weighted Average Contract Rate (Foreign Currency Units per USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian dollar</td>
<td>$17.1</td>
<td>—</td>
<td>1.0301</td>
</tr>
<tr>
<td>British pound</td>
<td>—</td>
<td>18.4</td>
<td>0.6408</td>
</tr>
<tr>
<td>Danish krone</td>
<td>1.4</td>
<td>—</td>
<td>5.5420</td>
</tr>
<tr>
<td>Euro</td>
<td>137.1</td>
<td>14.9</td>
<td>0.7449</td>
</tr>
<tr>
<td>Japanese yen</td>
<td>59.5</td>
<td>—</td>
<td>77.0477</td>
</tr>
<tr>
<td>New Zealand dollar</td>
<td>3.1</td>
<td>—</td>
<td>1.3046</td>
</tr>
<tr>
<td>Norwegian krone</td>
<td>7.4</td>
<td>—</td>
<td>5.8602</td>
</tr>
<tr>
<td>Swedish krona</td>
<td>2.4</td>
<td>—</td>
<td>6.8578</td>
</tr>
<tr>
<td>Swiss franc</td>
<td>—</td>
<td>34.6</td>
<td>0.9070</td>
</tr>
<tr>
<td>Totals</td>
<td>$228.0</td>
<td>$67.9</td>
<td></td>
</tr>
</tbody>
</table>

**Interest Rate Risk**

Our market risk exposure to changes in interest rates depends primarily on our investment portfolio and short-term borrowings. Our investment portfolio consisted of cash and cash equivalents and a short-term investment as of September 30, 2011. The principal amount of cash and cash equivalents at September 30, 2011 totaled $564 million with a weighted average interest rate of 0.19%. At September 30, 2011, our short-term investment represented a loan of $19.2 million to CPTC, which bears interest at LIBOR plus 6.25% per annum with a minimum interest rate of 8.25% per annum.

The Amended BofA Credit Facility (including the Japanese Line of Credit) allows us to borrow up to a maximum amount of $300 million. We collateralized a portion of the Amended BofA Credit Facility with a pledge of 65% of the voting shares that we hold in Varian Medical Systems Nederland B.V., a wholly-owned subsidiary. Borrowings under the Amended BofA Credit Facility (outside of the Japanese Line of Credit) accrue interest based on the LIBOR, the federal funds rate, or the BofA’s prime rate plus a margin. Borrowings under the Japanese Line of Credit accrue interest at the basic loan rate announced by the Bank of Japan plus a margin.

We are affected by market risk exposure primarily through the effect of changes in interest rates on amounts payable under the Amended BofA Credit Facility (including the Japanese Line of Credit). As of September 30, 2011, the amount outstanding under the Amended BofA Credit Facility was $181 million, none of which was outstanding under the Japanese Line of Credit, with interest being accrued on LIBOR or BofA’s prime rate plus a margin. If the amount outstanding under the Amended BofA Credit Facility
Facility remained at this level for an entire year and the LIBOR and BofA’s prime rate increased or decreased, respectively, by 1%, our annual interest expense would increase or decrease, respectively, by an additional $1.8 million. See a detailed discussion of the Amended BofA Credit Facility in Item 7, “MD&A- Liquidity and Capital Resources.”

In addition, we had $16.1 million of long-term debt (including the current maturities of long term debt) outstanding at September 30, 2011 that carried a weighted average fixed interest rate of 6.8% with principal payments due in various installments over a three-year period. To date, we have not used derivative financial instruments to hedge the interest rate of our investment portfolio, short-term borrowings or long-term debt, but may consider the use of derivative instruments in the future.

The table below presents principal amounts and related weighted average interest rates by year for our cash and cash equivalents, short-term borrowings and long term debt.

<table>
<thead>
<tr>
<th>(Dollars in millions)</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>Thereafter</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assets:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$564.5</td>
<td>$—</td>
<td>$—</td>
<td>$—</td>
<td>$—</td>
<td>$—</td>
<td>$564.5</td>
</tr>
<tr>
<td>Average interest rate(1)</td>
<td>0.19%</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>0.19%</td>
</tr>
<tr>
<td>Short-term investment(2)</td>
<td>$ 19.2</td>
<td>$—</td>
<td>$—</td>
<td>$—</td>
<td>$—</td>
<td>$—</td>
<td>$ 19.2</td>
</tr>
<tr>
<td>Average interest rate(1)</td>
<td>8.25%</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>8.25%</td>
</tr>
<tr>
<td><strong>Liabilities:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long-term debt</td>
<td>$ 9.9</td>
<td>$—</td>
<td>$ 6.2</td>
<td>$—</td>
<td>$—</td>
<td>$—</td>
<td>$ 16.1</td>
</tr>
<tr>
<td>Average interest rate</td>
<td>6.93%</td>
<td>—</td>
<td>6.70%</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>6.84%</td>
</tr>
<tr>
<td>Short-term borrowings under credit facility</td>
<td>$181.4</td>
<td>$—</td>
<td>$—</td>
<td>$—</td>
<td>$—</td>
<td>$—</td>
<td>$181.4</td>
</tr>
<tr>
<td>Average interest rate(1)</td>
<td>1.05%</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>1.05%</td>
</tr>
</tbody>
</table>

(1) Represents interest rates effective as of September 30, 2011.

(2) Represents amount loaned to CPTC under a loan facility. See Note 16, “Variable Interest Entity” of the Notes to the Consolidated Financial Statements for a detailed discussion.

The estimated fair value of our cash and cash equivalents and the estimated fair value of our short-term borrowings under the credit facility approximated the principal amounts reflected above based on the maturities of these financial instruments. The estimated fair value of our short-term investment also approximated the principal amount as this investment was made at the end of fiscal year 2011.

The fair value of our long-term debt was estimated based on the current rates available to us for debt of similar terms and remaining maturities. Under this method, the fair value of our debt was estimated to be $17.2 million at September 30, 2011. We determined the estimated fair value amount by using available market information and commonly accepted valuation methodologies. However, considerable judgment is required in interpreting market data to develop estimates of fair value. Accordingly, the fair value estimate presented herein is not necessarily indicative of the amount that we or holders of the instruments could realize in a current market exchange. The use of different assumptions and/or estimation methodologies may have a material effect on the estimated fair value.

Although payments under certain of our operating leases for our facilities are tied to market indices, these operating leases do not expose us to material interest rate risk.
Item 8.  Financial Statements and Supplementary Data

VARIAN MEDICAL SYSTEMS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF EARNINGS

(In thousands, except per share amounts)

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Product</td>
<td>$1,970,447</td>
<td>$1,813,646</td>
<td>$1,766,929</td>
</tr>
<tr>
<td>Service contracts and other</td>
<td>626,219</td>
<td>542,939</td>
<td>447,131</td>
</tr>
<tr>
<td><strong>Total revenues</strong></td>
<td><strong>2,596,666</strong></td>
<td><strong>2,356,585</strong></td>
<td><strong>2,214,060</strong></td>
</tr>
<tr>
<td><strong>Cost of revenues:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Product</td>
<td>1,151,561</td>
<td>1,055,150</td>
<td>1,013,973</td>
</tr>
<tr>
<td>Service contracts and other</td>
<td>309,216</td>
<td>275,793</td>
<td>239,582</td>
</tr>
<tr>
<td><strong>Total cost of revenues</strong></td>
<td><strong>1,460,777</strong></td>
<td><strong>1,330,943</strong></td>
<td><strong>1,253,555</strong></td>
</tr>
<tr>
<td><strong>Gross margin</strong></td>
<td><strong>1,135,889</strong></td>
<td><strong>1,025,642</strong></td>
<td><strong>960,505</strong></td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>170,725</td>
<td>156,748</td>
<td>147,375</td>
</tr>
<tr>
<td>Selling, general and administrative</td>
<td>376,713</td>
<td>334,692</td>
<td>338,984</td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td><strong>547,438</strong></td>
<td><strong>491,440</strong></td>
<td><strong>486,359</strong></td>
</tr>
<tr>
<td><strong>Operating earnings</strong></td>
<td><strong>588,451</strong></td>
<td><strong>534,202</strong></td>
<td><strong>474,146</strong></td>
</tr>
<tr>
<td>Interest income</td>
<td>2,858</td>
<td>2,831</td>
<td>4,594</td>
</tr>
<tr>
<td>Interest expense</td>
<td>(2,599)</td>
<td>(4,108)</td>
<td>(4,097)</td>
</tr>
<tr>
<td><strong>Earnings from continuing operations before taxes</strong></td>
<td><strong>588,710</strong></td>
<td><strong>532,925</strong></td>
<td><strong>474,643</strong></td>
</tr>
<tr>
<td>Taxes on earnings</td>
<td>180,084</td>
<td>165,444</td>
<td>143,167</td>
</tr>
<tr>
<td><strong>Earnings from continuing operations</strong></td>
<td><strong>408,626</strong></td>
<td><strong>367,481</strong></td>
<td><strong>331,476</strong></td>
</tr>
<tr>
<td>Loss from discontinued operations, net of taxes</td>
<td>(9,693)</td>
<td>(7,059)</td>
<td>(12,454)</td>
</tr>
<tr>
<td><strong>Net Earnings</strong></td>
<td>$398,933</td>
<td>$360,422</td>
<td>$319,022</td>
</tr>
</tbody>
</table>

Net earnings (loss) per share—basic:

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continuing operations</td>
<td>$3.50</td>
<td>$3.02</td>
<td>$2.67</td>
</tr>
<tr>
<td>Discontinued operations</td>
<td>(0.08)</td>
<td>(0.06)</td>
<td>(0.10)</td>
</tr>
<tr>
<td><strong>Net earnings per share</strong></td>
<td>$3.42</td>
<td>$2.96</td>
<td>$2.57</td>
</tr>
</tbody>
</table>

Net earnings (loss) per share—diluted:

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continuing operations</td>
<td>$3.44</td>
<td>$2.96</td>
<td>$2.65</td>
</tr>
<tr>
<td>Discontinued operations</td>
<td>(0.08)</td>
<td>(0.05)</td>
<td>(0.10)</td>
</tr>
<tr>
<td><strong>Net earnings per share</strong></td>
<td>$3.36</td>
<td>$2.91</td>
<td>$2.55</td>
</tr>
</tbody>
</table>

Shares used in the calculation of net earnings (loss) per share:

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weighted average shares outstanding—basic</td>
<td>116,703</td>
<td>121,816</td>
<td>124,034</td>
</tr>
<tr>
<td>Weighted average shares outstanding—diluted</td>
<td>118,735</td>
<td>124,025</td>
<td>124,995</td>
</tr>
</tbody>
</table>

See accompanying notes to the consolidated financial statements.
## VARIAN MEDICAL SYSTEMS, INC. AND SUBSIDIARIES

### CONSOLIDATED BALANCE SHEETS

See accompanying notes to the consolidated financial statements.

<table>
<thead>
<tr>
<th>Assets</th>
<th>September 30, 2011</th>
<th>October 1, 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current assets:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$564,457</td>
<td>$520,221</td>
</tr>
<tr>
<td>Short-term investment</td>
<td>19,205</td>
<td>—</td>
</tr>
<tr>
<td>Accounts receivable, net of allowance for doubtful accounts of $6,034 at September 30, 2011 and $4,209 at October 1, 2010</td>
<td>635,153</td>
<td>591,677</td>
</tr>
<tr>
<td>Inventories</td>
<td>409,962</td>
<td>363,933</td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>111,875</td>
<td>87,267</td>
</tr>
<tr>
<td>Deferred tax assets</td>
<td>113,965</td>
<td>118,246</td>
</tr>
<tr>
<td>Total current assets</td>
<td>1,854,617</td>
<td>1,681,344</td>
</tr>
<tr>
<td>Property, plant and equipment, net</td>
<td>285,894</td>
<td>267,927</td>
</tr>
<tr>
<td>Goodwill</td>
<td>212,452</td>
<td>208,451</td>
</tr>
<tr>
<td>Other assets</td>
<td>145,798</td>
<td>166,230</td>
</tr>
<tr>
<td>Total assets</td>
<td>$2,498,761</td>
<td>$2,323,952</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Liabilities and Stockholders’ Equity</th>
<th>2011</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current liabilities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>$154,946</td>
<td>$119,018</td>
</tr>
<tr>
<td>Accrued expenses</td>
<td>290,009</td>
<td>287,851</td>
</tr>
<tr>
<td>Product warranty</td>
<td>50,128</td>
<td>53,233</td>
</tr>
<tr>
<td>Deferred revenues</td>
<td>140,173</td>
<td>141,916</td>
</tr>
<tr>
<td>Advance payments from customers</td>
<td>299,380</td>
<td>275,998</td>
</tr>
<tr>
<td>Short-term borrowings</td>
<td>181,400</td>
<td>20,000</td>
</tr>
<tr>
<td>Current maturities of long-term debt</td>
<td>9,876</td>
<td>5,525</td>
</tr>
<tr>
<td>Total current liabilities</td>
<td>1,125,912</td>
<td>903,541</td>
</tr>
<tr>
<td>Long-term debt</td>
<td>6,250</td>
<td>17,869</td>
</tr>
<tr>
<td>Other long-term liabilities</td>
<td>122,708</td>
<td>127,175</td>
</tr>
<tr>
<td>Total liabilities</td>
<td>1,254,870</td>
<td>1,048,585</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Commitments and contingencies (Note 10)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preferred stock of $1 par value: 1,000 shares authorized; none issued and outstanding</td>
</tr>
<tr>
<td>Common stock of $1 par value: 189,000 shares authorized; 112,344 and 118,007 shares issued and outstanding at September 30, 2011 and at October 1, 2010, respectively</td>
</tr>
<tr>
<td>Capital in excess of par value</td>
</tr>
<tr>
<td>Retained earnings</td>
</tr>
<tr>
<td>Accumulated other comprehensive loss</td>
</tr>
<tr>
<td>Total stockholders’ equity</td>
</tr>
</tbody>
</table>

| Total liabilities and stockholders’ equity | $2,498,761 | $2,323,952 |

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### Consolidated Statements of Cash Flows

**VARIAN MEDICAL SYSTEMS, INC. AND SUBSIDIARIES**

#### Cash Flows from Operating Activities:

<table>
<thead>
<tr>
<th>Item</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net earnings</td>
<td>$398,933</td>
<td>$360,422</td>
<td>$319,022</td>
</tr>
<tr>
<td>Adjustments to reconcile net earnings to net cash provided</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Share-based compensation expense</td>
<td>42,018</td>
<td>39,814</td>
<td>42,577</td>
</tr>
<tr>
<td>- Tax benefits from exercises of share-based payment awards</td>
<td>24,441</td>
<td>18,282</td>
<td>8,270</td>
</tr>
<tr>
<td>- Excess tax benefits from share-based compensation</td>
<td>(22,570)</td>
<td>(15,072)</td>
<td>(9,639)</td>
</tr>
<tr>
<td>- Depreciation</td>
<td>49,643</td>
<td>44,973</td>
<td>41,008</td>
</tr>
<tr>
<td>- Amortization of intangible assets</td>
<td>2,948</td>
<td>3,320</td>
<td>3,601</td>
</tr>
<tr>
<td>- Deferred taxes</td>
<td>35,230</td>
<td>30,111</td>
<td>(22,008)</td>
</tr>
<tr>
<td>- Provision for doubtful accounts receivable</td>
<td>2,514</td>
<td>1,319</td>
<td>2,038</td>
</tr>
<tr>
<td>- (Income) loss on equity investment in affiliate</td>
<td>(4,276)</td>
<td>732</td>
<td>905</td>
</tr>
<tr>
<td>- Loss on sale of Research Instruments</td>
<td></td>
<td></td>
<td>8,062</td>
</tr>
<tr>
<td>- Other</td>
<td>(398)</td>
<td>1,076</td>
<td>(1,414)</td>
</tr>
<tr>
<td><strong>Net cash provided by operating activities</strong></td>
<td>472,779</td>
<td>460,786</td>
<td>304,433</td>
</tr>
</tbody>
</table>

#### Cash Flows from Investing Activities:

<table>
<thead>
<tr>
<th>Item</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchases of property, plant and equipment</td>
<td>(70,928)</td>
<td>(67,545)</td>
<td>(62,562)</td>
</tr>
<tr>
<td>Investment in debt security</td>
<td>(19,205)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Investment in a privately held company</td>
<td>(13,597)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Acquisition of businesses, net of cash acquired</td>
<td>(9,124)</td>
<td>(1,800)</td>
<td>(2,550)</td>
</tr>
<tr>
<td>- (Increase) decrease in cash surrender value of life insurance</td>
<td>48</td>
<td>591</td>
<td>(2,505)</td>
</tr>
<tr>
<td>Notes repayment (receivable) from affiliate and other</td>
<td>(781)</td>
<td>271</td>
<td>(5,662)</td>
</tr>
<tr>
<td>Other</td>
<td>(4,345)</td>
<td>(6,332)</td>
<td>(4,627)</td>
</tr>
<tr>
<td><strong>Net cash used in investing activities</strong></td>
<td>(117,932)</td>
<td>(74,815)</td>
<td>(77,906)</td>
</tr>
</tbody>
</table>

#### Cash Flows from Financing Activities:

<table>
<thead>
<tr>
<th>Item</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repurchases of common stock</td>
<td>(505,284)</td>
<td>(497,500)</td>
<td>(101,485)</td>
</tr>
<tr>
<td>Equity forward contract</td>
<td>(105,562)</td>
<td>(22,500)</td>
<td>—</td>
</tr>
<tr>
<td>Proceeds from issuance of common stock to employees</td>
<td>137,697</td>
<td>84,431</td>
<td>27,825</td>
</tr>
<tr>
<td>Excess tax benefits from share-based compensation</td>
<td>22,570</td>
<td>15,072</td>
<td>9,639</td>
</tr>
<tr>
<td>Employees’ tax withheld and paid for restricted stock and restricted stock units</td>
<td>(14,815)</td>
<td>(8,034)</td>
<td>(3,193)</td>
</tr>
<tr>
<td>Net borrowings under line of credit agreements</td>
<td>161,400</td>
<td>15,598</td>
<td>4,171</td>
</tr>
<tr>
<td>Repayments on bank borrowings</td>
<td>(7,264)</td>
<td>(9,005)</td>
<td>(7,987)</td>
</tr>
<tr>
<td>Other</td>
<td>(77)</td>
<td>(237)</td>
<td>(251)</td>
</tr>
<tr>
<td><strong>Net cash used in financing activities</strong></td>
<td>(311,335)</td>
<td>(422,175)</td>
<td>(71,281)</td>
</tr>
<tr>
<td>Effects of exchange rate changes on cash and cash equivalents</td>
<td>724</td>
<td>2,896</td>
<td>977</td>
</tr>
<tr>
<td>Net increase (decrease) in cash and cash equivalents</td>
<td>44,226</td>
<td>(33,308)</td>
<td>156,223</td>
</tr>
<tr>
<td>Cash and cash equivalents at beginning of fiscal year</td>
<td>520,221</td>
<td>553,529</td>
<td>397,306</td>
</tr>
<tr>
<td><strong>Cash and cash equivalents at end of fiscal year</strong></td>
<td>$564,457</td>
<td>$520,221</td>
<td>$553,529</td>
</tr>
</tbody>
</table>

**Supplemental information:**

VMS common stock valued at $41.3 million was received in fiscal year 2011 upon settlement of the February 2011 Repurchase Agreement (see Note 12).

*See accompanying notes to the consolidated financial statements.*

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## Table of Contents

VARIAN MEDICAL SYSTEMS, INC. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF STOCKHOLDERS’ EQUITY AND COMPREHENSIVE EARNINGS

<table>
<thead>
<tr>
<th>Common Stock</th>
<th>Capital in Excess of Par Value</th>
<th>Retained Earnings</th>
<th>Accumulated Other Comprehensive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shares</td>
<td>Amount</td>
<td>Par Value</td>
<td>Retained Earnings</td>
</tr>
<tr>
<td>Balances at September 26, 2008</td>
<td>125,590</td>
<td>$125,590</td>
<td>$ 468,364</td>
</tr>
<tr>
<td></td>
<td>Net earnings</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Currency translation adjustment</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Reclassification of foreign currency translation resulting from the sale of Research Instruments</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Unrealized gain on derivatives:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Increase in unrealized gain, net of taxes of $2,616</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Reclassification adjustments, net of taxes of $2,310</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Definestrient pension and post-retirement benefit plans:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Net loss arising during the year, net of taxes of $2,352</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Amortization of transition obligation, net of taxes of $191</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Amortization of prior service cost, net of taxes of $19</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Amortization and settlement of net actuarial loss, net of taxes of $287</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Comprehensive earnings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adoption of measurement date provision of ASC 715</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balances of common stock</td>
<td>150,000</td>
<td>150,000</td>
<td>26,325</td>
</tr>
<tr>
<td>Tax benefits from exercises of share-based payment awards</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuance of common stock in settlement of deferred stock units and restricted stock, net of shares withheld for employee taxes and cancellation</td>
<td>439</td>
<td>439</td>
<td>(3,631)</td>
</tr>
<tr>
<td>Share-based compensation expense</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Repurchases of common stock</td>
<td>(2,248)</td>
<td>(2,248)</td>
<td>(25,307)</td>
</tr>
<tr>
<td>Balances at October 2, 2009</td>
<td>125,281</td>
<td>125,281</td>
<td>516,478</td>
</tr>
<tr>
<td>Net earnings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Currency translation adjustment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unrealized gain on derivatives:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase in unrealized gain, net of taxes of $165</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reclassification adjustments, net of taxes of $360</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defined benefit pension and post-retirement benefit plans:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss arising during the year, net of taxes of $1,293</td>
<td></td>
<td></td>
<td>(7,750)</td>
</tr>
<tr>
<td>Amortization of transition obligation, net of taxes of $28</td>
<td></td>
<td></td>
<td>44</td>
</tr>
<tr>
<td>Amortization of prior service cost, net of taxes of $18</td>
<td></td>
<td></td>
<td>135</td>
</tr>
<tr>
<td>Amortization of net actuarial loss, net of taxes of $402</td>
<td></td>
<td></td>
<td>1,340</td>
</tr>
<tr>
<td>Comprehensive earnings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuance of common stock</td>
<td>2,651</td>
<td>2,651</td>
<td>81,780</td>
</tr>
<tr>
<td>Tax benefits from exercises of share-based payment awards</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuance (Retirement) of common stock in settlement of deferred stock units, restricted stock units and restricted stock, net of shares withheld for employee taxes and cancellation</td>
<td>(137)</td>
<td>(137)</td>
<td>(7,897)</td>
</tr>
<tr>
<td>Share-based compensation expense</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equity forward contract</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Repurchases of common stock</td>
<td>(9,788)</td>
<td>(9,788)</td>
<td>(117,479)</td>
</tr>
<tr>
<td>Balances at October 1, 2010</td>
<td>118,007</td>
<td>118,007</td>
<td>508,366</td>
</tr>
<tr>
<td>Net earnings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Currency translation adjustment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unrealized loss on derivatives:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase in unrealized loss, net of taxes of $206</td>
<td></td>
<td></td>
<td>(326)</td>
</tr>
<tr>
<td>Reclassification adjustments, net of taxes of $396</td>
<td></td>
<td></td>
<td>626</td>
</tr>
<tr>
<td>Defined benefit pension and post-retirement benefit plans:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net loss arising during the year, net of taxes of $1,783</td>
<td></td>
<td></td>
<td>(8,068)</td>
</tr>
<tr>
<td>Amortization of prior service cost, net of taxes of $18</td>
<td></td>
<td></td>
<td>137</td>
</tr>
<tr>
<td>Amortization of net actuarial loss, net of taxes of $446</td>
<td></td>
<td></td>
<td>1,655</td>
</tr>
<tr>
<td>Comprehensive earnings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuance of common stock</td>
<td>3,373</td>
<td>3,373</td>
<td>134,324</td>
</tr>
<tr>
<td>Tax benefits from exercises of share-based payment awards</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuance (Retirement) of common stock in settlement of deferred stock units, restricted stock units and restricted stock, net of shares withheld for employee taxes and cancellation</td>
<td>(8)</td>
<td>(8)</td>
<td>(14,807)</td>
</tr>
<tr>
<td>Share-based compensation expense</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equity forward contract</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Repurchases of common stock</td>
<td>(9,028)</td>
<td>(9,028)</td>
<td>(88,198)</td>
</tr>
<tr>
<td>Balances at September 30, 2011</td>
<td>112,344</td>
<td>112,344</td>
<td>500,922</td>
</tr>
</tbody>
</table>

See accompanying notes to the consolidated financial statements.

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1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Description of Business
Varian Medical Systems, Inc. ("VMS") and subsidiaries (collectively, the "Company") designs, manufactures, sells and services equipment and software products for treating cancer with radiotherapy, stereotactic radiosurgery, stereotactic body radiotherapy and brachytherapy. The Company also designs, manufactures, sells and services x-ray tubes for original equipment manufacturers ("OEMs"); replacement x-ray tubes; and flat panel digital image detectors for filmless x-rays imaging in medical, dental, veterinary, scientific and industrial applications. It designs, manufactures, sells and services linear accelerators, digital image detectors, image processing software and image detection products for security and inspection purposes. The Company also develops, designs, manufacturers, sells and services proton therapy products and systems for cancer treatment.

Basis of Presentation
The consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States ("GAAP"). As discussed in Note 18, "Discontinued Operations," the Company has presented the operating results of the scientific research instruments business ("Research Instruments") of ACCEL Instruments GmbH ("ACCEL," which has since changed its name to Varian Medical Systems Particle Therapy GmbH) as a discontinued operation in the Consolidated Statements of Earnings for all periods presented. Because amounts related to Research Instruments in the Consolidated Balance Sheets, the Consolidated Statements of Cash Flows and in the Consolidated Statements of Stockholders’ Equity and Comprehensive Earnings were not material for any period presented, the Company has not segregated them from continuing operations. Unless noted otherwise, discussion in these notes pertains to the Company’s continuing operations.

Fiscal Year
The fiscal years of the Company as reported are the 52- or 53-week periods ending on the Friday nearest September 30. Fiscal year 2011 was the 52-week period that ended on September 30, 2011. Fiscal year 2010 was the 52-week period that ended on October 1, 2010 and fiscal year 2009 was the 53-week period that ended on October 2, 2009.

Distribution
On April 2, 1999, Varian Associates, Inc. reorganized into three separate publicly traded companies by spinning off, through a tax-free distribution, two of its businesses to stockholders (the "Spin-offs"). The Spin-offs resulted in the following three companies: 1) the Company (renamed from Varian Associates, Inc. to Varian Medical Systems, Inc. following the Spin-offs); 2) Varian, Inc. ("VI"), which became a wholly owned subsidiary of Agilent Technologies Inc. in May 2010; and 3) Varian Semiconductor Equipment Associates, Inc. ("VSEA"), which became a wholly owned subsidiary of Applied Materials, Inc. in November 2011. The Spin-offs resulted in a non-cash dividend to stockholders. In connection with the Spin-offs, the Company, VI and VSEA also entered into various agreements that set forth the principles to be applied in separating the companies and allocating certain related costs and specified portions of contingent liabilities (see Note 10, “Commitments and Contingencies.”)
Principles of Consolidation

The consolidated financial statements include those of VMS and its subsidiaries. Intercompany balances, transactions and stock holdings have been eliminated in consolidation.

Consolidation of Variable Interest Entities

A variable interest entity is an entity with one or more of the following characteristics (a) the total equity investment at risk is not sufficient to permit the entity to finance its activities without additional financial support; (b) as a group, the holders of the equity investment at risk lack the ability to make certain decisions, the obligation to absorb expected losses or the right to receive expected residual returns; or (c) the equity investors have voting rights that are not proportional to their economic interests.

The Company uses a qualitative approach in assessing the consolidation requirement for a variable interest entity. The approach focuses on identifying which entity has the power to direct the activities that most significantly impact the variable interest entity’s economic performance and which enterprise has the obligation to absorb losses or the right to receive benefits from the variable interest entity. In the event that the Company is the primary beneficiary of a variable interest entity, the assets, liabilities, and results of operations of the variable interest entity will be included in the Company’s Consolidated Financial Statements. For fiscal years 2011, 2010 and 2009, the Company did not consolidate any variable interest entity.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates.

Fair Value of Financial Instruments

The carrying amounts of the Company’s financial instruments, including cash and cash equivalents, accounts receivable, net of allowance for doubtful accounts, accounts payable and short-term borrowings, approximate fair value due to their short maturities.

Foreign Currency Translation

The Company uses the U.S. dollar predominately as the functional currency of its foreign subsidiaries. For foreign subsidiaries where the U.S. dollar is the functional currency, gains and losses from remeasurement of foreign currency financial statements into U.S. dollars are included in the Consolidated Statements of Earnings. The aggregate net gains (losses) resulting from foreign currency transactions and remeasurement of foreign currency financial statements into U.S. dollars, that were included in the Consolidated Statements of Earnings, were $(1.4) million, $1.1 million and $8.5 million in fiscal years 2011, 2010 and 2009, respectively. For the foreign subsidiary where the local currency is the functional currency, translation adjustments of foreign currency financial statements into U.S. dollars are recorded to a separate component of accumulated other comprehensive income (loss).
Cash and Cash Equivalents
The Company considers currency on hand, demand deposits, time deposits, and all highly liquid investments with an original maturity of three months or less at the date of purchase to be cash and cash equivalents. Cash and cash equivalents are held in various financial institutions in the United States and internationally.

Short-term Investment
The Company classifies its investment in corporate debt security as an available-for-sale investment, which is recorded in the Consolidated Balance Sheets at fair value. Unrealized gains and losses on this investment are included as a separate component of “Accumulated other comprehensive loss,” net of tax, in the Consolidated Balance Sheets. The Company classifies its available-for-sale investment as short-term based on the nature of the investment and its availability for use in current operations. The Company monitors its short-term investment for possible other-than-temporary impairment when business events or changes in circumstances indicate that the carrying value of the investment may not be recoverable. The Company has not identified any indication of impairment of its short-term investment for fiscal year 2011.

Investments in Privately Held Companies
Equity investments in privately held companies in which the Company holds at least a 20% ownership interest or in which the Company has the ability to exercise significant influence are accounted for by the equity method. Equity investments in privately held companies in which the Company holds less than a 20% ownership interest and does not have the ability to exercise significant influence are accounted for under the cost method. Equity investments accounted for under the cost method totaled $21.4 million at September 30, 2011 and $7.8 million at October 1, 2010. The Company’s equity investments in privately held companies are included in “Other assets” in the Consolidated Balance Sheets. The Company monitors these equity investments for impairment and makes appropriate reductions in carrying values if the Company determines that impairment charges are required based primarily on the financial condition and near-term prospects of these companies. The Company did not have any impairment loss on equity investments in privately held companies for fiscal years 2011, 2010 and 2009.

Concentration of Credit Risk
Financial instruments that potentially expose the Company to concentrations of credit risk consist principally of cash, cash equivalents, short-term investment, trade accounts receivable and derivative financial instruments used in hedging activities. Cash and cash equivalents held with financial institutions may exceed the Federal Deposit Insurance Corporation insurance limits or similar limits in foreign jurisdictions. The Company has not experienced any losses on its deposits of cash and cash equivalents. With respect to its short-term investment, the Company performs a periodic credit evaluation of the California Proton Therapy Center LLC (“CPTC”). The Company is exposed to credit loss in the event of nonperformance by counterparties on the foreign currency forward contracts used in hedging activities. The Company transacts its foreign currency forward contracts with several large international and regional financial institutions and, therefore, does not consider the risk of nonperformance to be concentrated in any specific counterparty. The Company has not experienced any losses resulting from the failure of counterparty to meet its financial obligations under foreign currency forward contracts. Concentrations of credit risk with respect to trade accounts receivable are limited due to the large number of customers comprising the Company’s customer base and their geographic dispersion.
Company performs ongoing credit evaluations of its customers and, except for government tenders, group purchases and orders with a letter of credit, requires its Oncology Systems, SIP and Varian Particle Therapy (“VPT”) customers to provide a down payment. The Company maintains an allowance for doubtful accounts based upon the expected collectability of all accounts receivable. No single customer represented more than 10% of the accounts receivable amount for any period presented.

**Inventories**

Inventories are valued at the lower of cost or market (realizable value). Excess and obsolete inventories are determined primarily based on future demand forecasts and write-downs of excess and obsolete inventories are recorded as a component of cost of revenues. Cost is computed using standard cost (which approximates actual cost) and actual cost on a first-in-first-out or average basis.

**Property, Plant and Equipment**

Property, plant and equipment are stated at cost, net of accumulated depreciation. Major improvements are capitalized, while repairs and maintenance are expensed as incurred. Costs incurred for internally developed software during the application development stage are capitalized in accordance with Accounting Standards Codification (“ASC”) 350-40. Internally developed software primarily includes enterprise-level business software that the Company customizes to meet its specific operational needs. Depreciation and amortization are computed using the straight-line method over the estimated useful lives of the assets. Land is not subject to depreciation, but land improvements are depreciated over fifteen years. Land leasehold rights and leasehold improvements are amortized over the lesser of estimated useful lives or remaining lease terms. Buildings are depreciated over at least twenty years. Machinery and equipment are depreciated over their estimated useful lives, which range from three to seven years. Assets subject to lease are amortized over the lesser of estimated useful lives or lease terms. When assets are retired or otherwise disposed of, the assets and related accumulated depreciation are removed from the accounts. Gains or losses resulting from retirements or disposals are included in operating expenses.

**Goodwill and Intangible Assets**

Goodwill is recorded when the purchase price of an acquisition exceeds the fair value of the net identified tangible and intangible assets acquired. Purchased intangible assets are carried at cost, net of accumulated amortization. Intangible assets with finite lives are amortized over their estimated useful lives of approximately one to twenty years using the straight-line method.

**Impairment of Long-lived Assets, Goodwill and Intangible Assets**

The Company reviews long-lived assets and identifiable intangible assets with finite lives for impairment whenever events or changes in circumstances indicate that the carrying amount of these assets may not be recoverable. The Company assesses these assets for impairment based on their estimated undiscounted future cash flows. If the carrying value of the assets exceeds the estimated future undiscounted cash flows, the Company recognizes an impairment loss based on the excess of the carrying amount over the fair value of the assets. The Company did not recognize any impairment charges for long-lived assets and identifiable intangible assets in fiscal years 2011, 2010 and 2009.

In accordance with ASC 350, the Company evaluates goodwill for impairment at least annually or whenever an event occurs or circumstances changes that would more likely than not reduce the fair value of a reporting unit below its carrying amount. The impairment test for goodwill is a two-step process.
Step one consists of a comparison of the fair value of a reporting unit against its carrying amount, including the goodwill allocated to each reporting unit. The Company determines the fair value of its reporting units based on the present value of estimated future cash flows of the reporting units. If the carrying amount of the reporting unit is in excess of its fair value, step two requires the comparison of the implied fair value of the reporting unit’s goodwill against the carrying amount of the reporting unit’s goodwill. Any excess of the carrying value of the reporting unit’s goodwill over the implied fair value of the reporting unit’s goodwill is recorded as an impairment loss.

In fiscal years 2011, 2010 and 2009, the Company performed the annual goodwill impairment testing for the four reporting units that carried goodwill, namely Oncology Systems, X-ray Products, Security and Inspection Products (“SIP”) and VPT (the business of ACCEL that remained after the sale of Research Instruments), and found no impairment. Based on the most recent annual goodwill impairment testing that the Company performed in fiscal year 2011 for each of its four reporting units that carried goodwill, Oncology Systems, X-ray Products, SIP and VPT, the fair value of each such reporting unit was substantially in excess of its carrying value.

Environmental Remediation Liabilities

Environmental remediation liabilities are recorded when environmental assessments and/or remediation efforts are probable, and the costs of these assessments or remediation efforts can be reasonably estimated. The Company records these liabilities in accordance with ASC 410-30.

Revenue Recognition

The Company’s revenues are derived primarily from the sale of hardware and software products, and related services and contracts from the Company’s Oncology Systems, X-ray Products, SIP and VPT businesses. The Company recognizes its revenues net of any value added or sales tax and net of sales discounts.

In October 2009, the Financial Accounting Standards Board (“FASB”) amended the scope of its software revenue guidance to exclude tangible products containing software components and non-software components that function together to deliver the tangible product’s essential functionality. In October 2009, the FASB also amended its accounting guidance for multiple deliverable revenue arrangements to provide updated guidance on whether multiple deliverables in a revenue arrangement exist, how the deliverables in an arrangement should be separated and how the consideration should be allocated. This guidance requires an entity to allocate consideration in an arrangement using estimated selling prices (“ESP”) of deliverables if a vendor does not have vendor-specific objective evidence (“VSOE”) of selling price or third-party evidence of selling price (“TPE”), eliminates the use of the residual method for non-software products and requires an entity to allocate consideration using the relative selling price method.

At the beginning of its second quarter of fiscal year 2010, the Company elected to early adopt the amended software revenue guidance and amended multiple deliverable revenue arrangement guidance on a prospective basis as of the beginning of fiscal year 2010 and has applied the amended guidance for revenue arrangements originating or materially modified after October 2, 2009.

Many of the Company’s revenue arrangements consist of multiple deliverables of its software and non-software products, as well as related services. In Oncology Systems, the linear accelerators are often sold with hardware and software accessory products that enhance efficiency and enable delivery of
advanced radiotherapy and radiosurgery treatments. Many of the Oncology Systems hardware and software accessory products are also sold on a stand-alone basis. The X-ray Products business generally sells its x-ray tubes and flat panel detectors on a stand-alone basis. However, the X-ray Products business occasionally sells its flat panel detectors and x-ray tubes as a package that is optimized for digital x-ray imaging. While SIP products are generally sold on a stand-alone basis, SIP occasionally sells its Linatron® x-ray accelerators together with its imaging processing software and image detection products to original equipment manufacturer (“OEM”) customers that incorporate them into their inspection systems. Service contracts are often sold with Oncology Systems products, as well as with certain products in the SIP business. As discussed below, certain of the Oncology Systems and SIP products are sold with installation obligations. Delivery of different elements in a revenue arrangement often span more than one reporting period. For example, a linear accelerator may be delivered in a reporting period but the related installation is completed in a later period. Revenue related to service contracts usually starts after the expiration of the warranty period for non-software products or upon acceptance for software products.

For arrangements with multiple elements including hardware and software products that were entered into prior to fiscal year 2010, the Company allocated revenue to each element based on the prior authoritative guidance. For hardware products, the Company allocated revenue to each element based on its relative fair value and recognized the allocated revenue for each delivered element provided that it had value to the customer on a stand-alone basis. For software products (which includes software and deliverables for which a software deliverable is essential to its functionality), the Company allocated revenue to each element based on VSOE of its fair value. In the absence of VSOE of its fair value for a delivered element, the Company first allocated revenue to the undelivered element based on the fair value of the undelivered elements and the residual revenue to the delivered elements, provided that the undelivered software element is not essential to the functionality of the delivered element. The Company limited the amount of revenue recognition for delivered elements to the amount that was not contingent on the future delivery of additional products or services.

For arrangements with multiple elements including software and non-software deliverables entered into or materially modified after October 2, 2009, the Company first allocates revenues among the software and non-software deliverables on a relative selling price basis. The amounts allocated to the non-software products and software are accounted for as follows:

**Non-software Products**

For arrangements entered into or materially modified after October 2, 2009, non-software products include hardware products as well as software components that function together with the hardware components to deliver the product’s essential functionality. Except as described below under “Service Contracts and Other,” the Company recognizes revenues for non-software products when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the price is fixed or determinable and collectability is reasonably assured.

For multiple element revenue arrangements that involve non-software products, a delivered non-software element is considered as a separate unit of accounting when it has stand-alone value and there is no customer-negotiated refund or return rights for the delivered element. The allocation of revenue to all deliverables based on their relative selling prices is determined at the inception of the arrangement. The selling price for each deliverable is determined using VSOE of selling price, if it exists; otherwise, TPE. If neither VSOE of selling price nor TPE exists for a deliverable, the Company uses the deliverable’s ESP.
The Company’s non-software products have stand-alone value because they are sold separately. Product installation, which is a standard process and does not involve changes to the features or capabilities of the Company’s products, is considered as a separate unit of accounting. Installation of Oncology Systems and SIP non-software products involves the Company’s testing of each product at its factory prior to the product’s delivery to ensure that the product meets the Company’s published specifications. Once these tests establish that the specifications have been met, the product is then disassembled and shipped to the customer’s site as specified in the customer contract. Risk of loss is transferred to the customer either at the time of shipment or delivery, depending upon the shipping terms of the contract. At the customer’s site, the product is reassembled, installed and retested in accordance with the Company’s installation procedures to ensure and demonstrate compliance with the Company’s published specifications for that product.

Under the terms of the Company’s non-software sales contract, “acceptance” of a non-software product with installation obligations is deemed to have occurred upon the earliest of (i) completion of product installation and testing in accordance with the Company’s standard installation procedures showing compliance with the Company’s published specifications for that product, (ii) receipt by the Company of an acceptance form executed by the customer acknowledging installation and compliance with the Company’s published specifications for that product, (iii) use by the customer of the product for any purpose after its delivery or (iv) six months after the delivery of the product to the customer by the Company. The contract allows for cancellation only by mutual agreement, thus the customer does not have a unilateral right to return the delivered non-software product.

The Company establishes VSOE of selling price based on the price charged for a deliverable when sold separately and, for a deliverable not yet being sold separately, the price established by management having the relevant authority. As discussed above, many products are sold in stand-alone arrangements and accordingly have VSOE of selling price. Service contracts are sold separately through either original sale or subsequent renewal of annual contracts. The Company establishes TPE generally by evaluating the Company’s and competitors’ largely interchangeable competitor products or services in stand-alone sales to similarly situated customers. The TPE for product installation is determined based on the estimated labor hours and the prevailing hourly rate charged for similar services, as well as the prices charged by outside vendors for installation of the Company’s products. For certain products for which the Company is not able to establish VSOE of selling prices or TPE, ESPs are used as the basis of selling prices. The Company estimates selling prices following an established process that considers market conditions, including competitor product offerings and pricing strategies, as well as internal factors such as historical pricing practices and margin objectives. The establishment of product and service ESPs is controlled and reviewed by the appropriate level of management in all of the Company’s businesses.

The Company limits the amount of revenue recognized for delivered items to the amount that is not contingent upon the delivery of additional products or services. For Oncology Systems and SIP non-software products with installation obligations, the Company recognizes as revenues a portion of the product purchase price upon transfer of risk of loss and defers revenue recognition on the portion associated with product installation until “acceptance,” provided that all other criteria for revenue recognition have been met. The portion deferred is the greater of the relative selling price of the installation services for such products or the amount of payment contractually linked to the “acceptance.” However, when the entire purchase price for the non-software product is conditioned upon “acceptance,” the Company defers all revenues until “acceptance.”
The Company does not have installation obligations for x-ray tubes, digital image detectors, spare parts and certain hardware products in Oncology Systems and the SIP business. For the products that do not include installation obligations, the Company recognizes revenues upon the transfer of risk of loss, which is either at the time of shipment or delivery, depending upon the shipping terms of the contract, provided that all other revenue recognition criteria have been met.

Software Products

Except as described below under “Service Contracts and Other,” the Company recognizes revenues for software products in accordance with the software revenue recognition guidance. The Company recognizes license revenues when all of the following criteria have been met: persuasive evidence of an arrangement exists, the vendor’s fee is fixed or determinable, collection of the related receivable is probable, delivery of the product has occurred and the Company has received from the customer an acceptance form acknowledging installation and substantial conformance with the Company’s specifications (as set forth in the user manual) for such product, or upon verification of installation when customer acceptance is not required to be received, or upon the expiration of an acceptance period, provided that all other criteria for revenue recognition have been met.

Revenues earned on software arrangements involving multiple elements are allocated to each element based on VSOE of fair value, which is based on the price charged when the same element is sold separately. In instances when evidence of VSOE of fair value of all undelivered elements exists, but evidence does not exist for one or more delivered elements, revenues are recognized using the residual method. Under the residual method, the fair value of the undelivered elements is deferred and the remaining portion of the arrangement fee is recognized as revenue. Revenue allocated to maintenance and support is recognized ratably over the maintenance term (typically one year).

Installation of the Company’s software products may involve a certain amount of customer-specific implementation to enable the software product to function within the customer’s operating environment (i.e., with the customer’s information technology network and other hardware, with the customer’s data interfaces and with the customer’s administrative processes) and substantially in conformance with the Company’s specifications (as set forth in the user manual) for such product. With these software products, customers do not have full use of the software (i.e., functionality) until the software is installed as described above and functioning within the customer’s operating environment. Therefore, the Company recognizes 100% of such software revenues upon receipt from the customer of the Company’s acceptance form acknowledging installation and such substantial conformance, or upon verification of installation when the Company is not required to receive customer acceptance, or upon the expiration of an acceptance period, provided that all other criteria for revenue recognition have been met.

The Company does not have installation obligations for certain brachytherapy and SIP software products. For software products that do not include installation obligations, the Company recognizes revenues upon the transfer of risk of loss, which is either at the time of shipment or delivery, depending upon the shipping terms of the contract, provided that all other criteria for revenue recognition have been met.

Contracts for Customized Equipment

Revenues related to certain highly customized image detection systems, proton therapy systems and proton therapy system commissioning contracts are recognized in accordance with contract accounting. For contracts in which the Company can estimate contract costs with reasonable dependability, the
Company recognizes contract revenues under the percentage-of-completion method. Revenues recognized under the percentage-of-completion method are based on contract costs incurred to date compared with total estimated contract costs. Changes in estimates of total contract revenue, total contract cost or the extent of progress towards completion are recognized in the period in which the changes in estimates are identified. Estimated losses on contracts are recognized in the period in which the loss is identified. In circumstances in which the final outcome of a contract cannot be precisely estimated but a loss on the contract is not expected, the Company recognizes revenues under the percentage-of-completion method based on a zero profit margin until more precise estimates can be made. If and when the Company can make more precise estimates, revenues and costs of sales are adjusted in the same period.

Costs incurred and revenues recognized under the percentage-of-completion method in excess of customer billings are included in “Accounts receivable” in the Consolidated Balance Sheets. Customer billings in excess of costs incurred and revenue recognized under the percentage-of-completion method are included in “Advance payments from customers” in the Consolidated Balance Sheets. The Company did not have material balances of i) costs incurred and revenues recognized in excess of customer billings and ii) customer billings in excess of costs incurred and revenue recognized as of September 30, 2011 and October 1, 2010.

Service Contracts and Other
Revenues related to service contracts are recognized ratably over the period of the related contracts. For proton therapy systems service contracts, revenues related to certain penalty provisions are deferred until reliable estimates can be made or the related penalty provisions lapse. Revenues related to services performed on a time-and-materials basis are recognized when they are earned and billable.

Advance Payments from Customers
Except for government tenders, group purchases and orders with letters of credit, the Company typically requires its Oncology Systems, SIP and VPT customers to provide a down payment prior to transfer of risk of loss of ordered products or an advance payment prior to performance under service contracts. These payments are recorded as “Advance payments from customers” in the Consolidated Balance Sheets.

Deferred Revenue
Deferred revenue includes (i) the billable amount applicable to shipment of software products but for which installation and/or final acceptance have not been completed and (ii) the billable amount applicable to installation and/or acceptance of non-software products which have not been completed. Deferred costs associated with deferred revenues are included in “Inventories” in the Consolidated Balance Sheets.

Share-Based Compensation Expense
The Company measures and recognizes compensation expense for all share-based payment awards made to employees and directors, including stock options, employee stock purchases related to the Varian Medical Systems, Inc. Employee Stock Purchase Plan (the “Employee Stock Purchase Plan”), deferred stock units, restricted stock and restricted stock units based on their fair values in accordance with ASC 718. Share-based compensation expense is based on the value of the portion of share-based payment
awards that is ultimately expected to vest. Share-based compensation expense recognized in the Consolidated Statements of Earnings includes compensation expense for the share-based payment awards based on the grant date fair value estimated in accordance with ASC 718. The Company attributes the value of share-based compensation to expense using the straight-line method.

The Company has valued its share-based payment awards using the Black-Scholes option-pricing model, which was developed for use in estimating the fair value of traded options that have no vesting restrictions and are fully transferable. The Black-Scholes model requires the input of certain assumptions. VMS’s stock options and the option component of the Employee Stock Purchase Plan shares have characteristics significantly different from those of traded options, and changes in the assumptions can materially affect the fair value estimates. The Company considers only the direct tax impacts of share-based compensation awards when calculating the amount of tax windfalls or shortfalls.

For fiscal years 2011, 2010 and 2009, total share-based compensation expenses, before taxes, were $42.0 million, $39.8 million and $42.6 million, respectively. See Note 13, “Employee Stock Plans” for a detailed discussion.

Earnings per Share

Basic net earnings per share is computed by dividing net earnings by the weighted average number of shares of VMS common stock outstanding for the period. Diluted net earnings per share is computed by dividing net earnings by the sum of the weighted average number of common shares outstanding and dilutive common shares under the treasury method.

The following table sets forth the computation of net basic and diluted earnings per share:

<table>
<thead>
<tr>
<th>(In thousands, except per share amounts)</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Earnings from continuing operations</td>
<td>$408,626</td>
<td>$367,481</td>
<td>$331,476</td>
</tr>
<tr>
<td>Loss from discontinued operations, net of taxes</td>
<td>(9,693)</td>
<td>(7,059)</td>
<td>(12,454)</td>
</tr>
<tr>
<td>Net earnings</td>
<td>$398,933</td>
<td>$360,422</td>
<td>$319,022</td>
</tr>
<tr>
<td>Weighted average shares outstanding—basic</td>
<td>116,703</td>
<td>121,816</td>
<td>124,034</td>
</tr>
<tr>
<td>Dilutive effect of potential common shares</td>
<td>2,032</td>
<td>2,209</td>
<td>961</td>
</tr>
<tr>
<td>Weighted average shares outstanding—diluted</td>
<td>118,735</td>
<td>124,025</td>
<td>124,995</td>
</tr>
<tr>
<td>Net earnings (loss) per share—basic:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Continuing operations</td>
<td>$ 3.50</td>
<td>$ 3.02</td>
<td>$ 2.67</td>
</tr>
<tr>
<td>Discontinued operations</td>
<td>(0.08)</td>
<td>(0.06)</td>
<td>(0.10)</td>
</tr>
<tr>
<td>Net earnings per share</td>
<td>$ 3.42</td>
<td>$ 2.96</td>
<td>$ 2.57</td>
</tr>
<tr>
<td>Net earnings (loss) per share—diluted:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Continuing operations</td>
<td>$ 3.44</td>
<td>$ 2.96</td>
<td>$ 2.65</td>
</tr>
<tr>
<td>Discontinued operations</td>
<td>(0.08)</td>
<td>(0.05)</td>
<td>(0.10)</td>
</tr>
<tr>
<td>Net earnings per share</td>
<td>$ 3.36</td>
<td>$ 2.91</td>
<td>$ 2.55</td>
</tr>
</tbody>
</table>

The Company excludes potentially dilutive common shares (including shares underlying stock options) from the computation of diluted weighted average shares outstanding if the per share value, either the exercise price of the options or the sum of (a) the exercise price of the options and (b) the amount of the
compensation cost attributed to future services and not yet recognized and (c) the amount of tax benefit or shortfall that would be recorded in additional paid-in capital when the award becomes deductible, is greater than the average market price of the shares, because the inclusion of the shares underlying these stock options would be antidilutive to earnings per share. Accordingly, stock options to purchase 160,312 shares, 2,321,408 shares and 8,245,887 shares at weighted average exercise prices of $57.38, $52.90 and $46.82, respectively, were excluded from the computation of diluted weighted average shares outstanding during fiscal years 2011, 2010 and 2009, respectively.

Shipping and Handling Costs
Shipping and handling costs are included as a component of cost of revenues.

Research and Development
To date, research and development costs have been expensed as incurred. These costs primarily include employees’ compensation, consulting fees, material costs and research grants.

Software Development Costs
Costs for the development of new software products and substantial enhancements to existing software products are expensed as incurred until technological feasibility has been established, at which time any additional costs would be capitalized in accordance with ASC 985-20. No costs associated with the development of software have been capitalized as the Company believes its current software development process is essentially completed concurrent with the establishment of technological feasibility.

Comprehensive Earnings
Comprehensive earnings include all changes in equity (net assets) during a period from non-owner sources. Comprehensive earnings include currency translation adjustments, reclassification of foreign currency translation resulting from the sale of Research Instruments, change in unrealized gain or loss on derivative instruments designated as cash flow hedges, net of taxes (see Note 9, “Derivative Instruments and Hedging Activities”), and adjustments to and amortization of unrecognized actuarial gain or loss, unrecognized transition obligation and unrecognized prior service cost of our defined benefit pension and post-retirement benefit plans. See Note 11, “Retirement Plans”.

Taxes on Earnings
Taxes on earnings are based on pretax financial accounting income. Deferred tax assets and liabilities are recorded based on the difference between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse.

Recent Accounting Pronouncements
In September 2011, the FASB amended ASC 350, “Intangibles – Goodwill and Other.” This amendment is intended to simplify how an entity tests goodwill for impairment and will allow an entity to first assess qualitative factors to determine whether it is necessary to perform the two-step quantitative goodwill impairment test. An entity no longer will be required to calculate the fair value of a reporting unit unless the entity determines, based on a qualitative assessment, that it is more likely than not that the reporting unit’s fair value is less than its carrying amount. The amendment will be effective for the Company
beginning in the first quarter of fiscal 2013 and early adoption is permitted. The Company is currently assessing the potential impact of this amendment on its consolidated financial position, results of operations and cash flows.

In June 2011, the FASB amended ASC 220, “Presentation of Comprehensive Income.” This amendment will require companies to present the components of net income and other comprehensive income either as one continuous statement or as two consecutive statements. It eliminates the option to present components of other comprehensive income as part of the statement of changes in stockholders’ equity. The amended guidance, which must be applied retroactively, will be effective for the Company in the first quarter of fiscal year 2013. The adoption of this amendment concerns disclosure only and the Company does not expect it to have an impact on its consolidated financial position, results of operations or cash flows.

In May 2011, the FASB amended ASC 820, “Fair Value Measurement.” This amendment is intended to result in convergence between GAAP and International Financial Reporting Standards requirements for measurement of and disclosures about fair value. This guidance clarifies the application of existing fair value measurements and disclosures, and changes certain principles or requirements for fair value measurements and disclosures. The amendment will be effective for the Company in the second quarter of fiscal year 2012. The Company is currently assessing the potential impact, if any, this amendment may have on its consolidated financial position, results of operations and cash flows.

### 2. BALANCE SHEET COMPONENTS

<table>
<thead>
<tr>
<th>Short-term Investment:</th>
<th>September 30, 2011</th>
<th>October 1, 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amortized cost</td>
<td>$19.2</td>
<td>$—</td>
</tr>
<tr>
<td>Unrealized gain (loss)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Fair value</td>
<td>$19.2</td>
<td>$—</td>
</tr>
</tbody>
</table>
Short-term investment, which represents a loan to CPTC, was classified as available-for-sale. See Note 16, “Variable Interest Entity.”

### Table of Contents

<table>
<thead>
<tr>
<th>September 30, 2011</th>
<th>October 1, 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>(In millions)</td>
<td></td>
</tr>
<tr>
<td><strong>Inventories:</strong></td>
<td></td>
</tr>
<tr>
<td>Raw materials and parts</td>
<td>$231.9</td>
</tr>
<tr>
<td>Work-in-progress</td>
<td>$54.5</td>
</tr>
<tr>
<td>Finished goods</td>
<td>$123.6</td>
</tr>
<tr>
<td><strong>Total inventories</strong></td>
<td>$410.0</td>
</tr>
<tr>
<td><strong>Property, plant and equipment:</strong></td>
<td></td>
</tr>
<tr>
<td>Land and land improvements</td>
<td>$42.7</td>
</tr>
<tr>
<td>Buildings and leasehold improvements</td>
<td>$211.8</td>
</tr>
<tr>
<td>Machinery and equipment</td>
<td>$324.4</td>
</tr>
<tr>
<td>Construction in progress</td>
<td>$18.7</td>
</tr>
<tr>
<td>Assets subject to lease</td>
<td>$3.5</td>
</tr>
<tr>
<td><strong>Accumulated depreciation and amortization</strong></td>
<td>$(315.2)</td>
</tr>
<tr>
<td><strong>Property, plant and equipment, net</strong></td>
<td>$285.9</td>
</tr>
<tr>
<td><strong>Accrued expenses:</strong></td>
<td></td>
</tr>
<tr>
<td>Accrued compensation and benefits</td>
<td>$144.8</td>
</tr>
<tr>
<td>Income taxes payable</td>
<td>$34.5</td>
</tr>
<tr>
<td>Current deferred tax liabilities</td>
<td>$3.2</td>
</tr>
<tr>
<td>Other</td>
<td>$107.5</td>
</tr>
<tr>
<td><strong>Total accrued expenses</strong></td>
<td>$290.0</td>
</tr>
<tr>
<td><strong>Other long-term liabilities:</strong></td>
<td></td>
</tr>
<tr>
<td>Long-term income taxes payable</td>
<td>$44.8</td>
</tr>
<tr>
<td>Other</td>
<td>$77.9</td>
</tr>
<tr>
<td><strong>Total other long-term liabilities</strong></td>
<td>$122.7</td>
</tr>
</tbody>
</table>

### 3. FAIR VALUE

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. There is a three-level fair value hierarchy that prioritizes the inputs used to measure fair value. This hierarchy requires entities to maximize the use of observable inputs and minimize the use of unobservable inputs. The three levels of inputs used to measure fair value are as follows:

- **Level 1**—Quoted prices in active markets for identical assets or liabilities.
- **Level 2**—Observable inputs other than quoted prices included in Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data.

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Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

Level 1 instrument valuations are obtained from quotes for transactions in active exchange markets involving identical assets. Level 2 instrument valuations include valuations obtained from quoted prices for identical assets in markets that are not active. In addition, the Company has elected to use the income approach to value its derivative instruments using standard valuation techniques and Level 2 inputs, such as currency spot rates, forward points and credit default swap spreads. The Company’s derivative instruments are short-term in nature, typically one month to twelve months in duration. Level 3 contingent consideration liability valuations are based on the income approach, with key assumptions, including estimated probabilities of achievement of milestones related to market acceptance of the products of an acquired business, as well as estimated discount rates corresponding to the periods of expected payments. Level 3 short-term investment is valued based on the income approach, with key assumptions, including estimated probabilities of default by the counterparty and the London Interbank Offered Rate (“LIBOR”). The fair value of an option to purchase a company, a Level 3 asset, is based on the income approach, with key assumptions, including projected operating results of the company, as well as estimated discount rates corresponding to the periods of expected payments.

There were no significant transfers of assets or liabilities between fair value measurement levels during fiscal years 2011, 2010 and 2009. Transfers between fair value measurement levels are recognized at the end of the reporting period.

In the tables below, the Company has segregated all assets and liabilities that are measured at fair value on a recurring basis into the most appropriate level within the fair value hierarchy based on the inputs used to determine the fair value at the measurement date.
### Assets/Liabilities Measured at Fair Value on a Recurring Basis

The following tables present the Company’s assets and liabilities that were measured at fair value on a recurring basis.

<table>
<thead>
<tr>
<th>Type of Instruments</th>
<th>Quoted Prices in</th>
<th>Fair Value Measurement Using</th>
<th>Total Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Active Markets</td>
<td>Significant Other</td>
<td></td>
</tr>
<tr>
<td></td>
<td>for Identical</td>
<td>Observable</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Instruments</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(Level 1)</td>
<td>(Level 2)</td>
<td>(Level 3)</td>
</tr>
</tbody>
</table>

#### Assets at September 30, 2011:

<table>
<thead>
<tr>
<th>Type of Instruments</th>
<th>Quoted Prices in</th>
<th>Fair Value Measurement Using</th>
<th>Total Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Money market funds</td>
<td>$ 1.3</td>
<td>$ —</td>
<td>$ 1.3</td>
</tr>
<tr>
<td>Option to purchase a company</td>
<td>—</td>
<td>$ —</td>
<td>1.4</td>
</tr>
<tr>
<td>Corporate debt security</td>
<td></td>
<td>$ —</td>
<td>19.2</td>
</tr>
<tr>
<td>Total assets measured at fair value</td>
<td>$ 1.3</td>
<td>$ —</td>
<td>$ 21.9</td>
</tr>
</tbody>
</table>

#### Liabilities at September 30, 2011:

<table>
<thead>
<tr>
<th>Type of Instruments</th>
<th>Quoted Prices in</th>
<th>Fair Value Measurement Using</th>
<th>Total Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Derivative liabilities</td>
<td>$ —</td>
<td>$ —</td>
<td>$ —</td>
</tr>
<tr>
<td>Contingent consideration</td>
<td></td>
<td>$ —</td>
<td>(0.1)</td>
</tr>
<tr>
<td>Total liabilities measured at fair value</td>
<td>$ —</td>
<td>$ —</td>
<td>(0.1)</td>
</tr>
</tbody>
</table>

#### Assets at October 1, 2010:

<table>
<thead>
<tr>
<th>Type of Instruments</th>
<th>Quoted Prices in</th>
<th>Fair Value Measurement Using</th>
<th>Total Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Money market funds</td>
<td>$ 36.4</td>
<td>$ —</td>
<td>$ 36.4</td>
</tr>
<tr>
<td>Total assets measured at fair value</td>
<td>$ 36.4</td>
<td>$ —</td>
<td>$ 36.4</td>
</tr>
</tbody>
</table>

#### Liabilities at October 1, 2010:

<table>
<thead>
<tr>
<th>Type of Instruments</th>
<th>Quoted Prices in</th>
<th>Fair Value Measurement Using</th>
<th>Total Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Derivative liabilities</td>
<td>$ —</td>
<td>$ (0.5)</td>
<td>(0.5)</td>
</tr>
<tr>
<td>Total liabilities measured at fair value</td>
<td>$ —</td>
<td>$ (0.5)</td>
<td>(0.5)</td>
</tr>
</tbody>
</table>
The following table presents the reconciliation for all assets and liabilities measured and recorded at fair value on a recurring basis using significant unobservable inputs (Level 3):

<table>
<thead>
<tr>
<th>Line Item in Consolidated Balance Sheet</th>
<th>Quoted Prices in Active Markets for Identical Instruments (Level 1)</th>
<th>Significant Other Observable Inputs (Level 2)</th>
<th>Significant Unobservable Inputs (Level 3)</th>
<th>Total Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assets at September 30, 2011:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 0.2</td>
<td>$ —</td>
<td>$ —</td>
<td>$ 0.2</td>
</tr>
<tr>
<td>Short-term investment</td>
<td></td>
<td></td>
<td>19.2</td>
<td>19.2</td>
</tr>
<tr>
<td>Other assets</td>
<td>1.1</td>
<td>—</td>
<td>1.4</td>
<td>2.5</td>
</tr>
<tr>
<td>Total assets measured at fair value</td>
<td>$ 1.3</td>
<td>$ —</td>
<td>$ 20.6</td>
<td>$ 21.9</td>
</tr>
<tr>
<td><strong>Liabilities at September 30, 2011:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accrued liabilities</td>
<td></td>
<td></td>
<td>$ —</td>
<td>$ —</td>
</tr>
<tr>
<td>Other long-term liabilities</td>
<td></td>
<td></td>
<td>(0.1)</td>
<td>(0.1)</td>
</tr>
<tr>
<td>Total liabilities measured at fair value</td>
<td></td>
<td></td>
<td>$ (0.1)</td>
<td>$ (0.1)</td>
</tr>
<tr>
<td><strong>Assets at October 1, 2010:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$ 35.3</td>
<td>$ —</td>
<td>$ —</td>
<td>$ 35.3</td>
</tr>
<tr>
<td>Other assets</td>
<td>1.1</td>
<td>—</td>
<td>—</td>
<td>1.1</td>
</tr>
<tr>
<td>Total assets measured at fair value</td>
<td>$ 36.4</td>
<td>$ —</td>
<td>$ —</td>
<td>$ 36.4</td>
</tr>
<tr>
<td><strong>Liabilities at October 1, 2010:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accrued liabilities</td>
<td></td>
<td>$ (0.5)</td>
<td>$ —</td>
<td>$ (0.5)</td>
</tr>
<tr>
<td>Total liabilities measured at fair value</td>
<td></td>
<td>$ (0.5)</td>
<td>$ —</td>
<td>$ (0.5)</td>
</tr>
</tbody>
</table>

The following table presents the reconciliation for all assets and liabilities measured and recorded at fair value on a recurring basis using significant unobservable inputs (Level 3):

<table>
<thead>
<tr>
<th>Corporate Debt Security</th>
<th>Purchase a Company</th>
<th>Contingent Consideration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at October 1, 2010</td>
<td>$ —</td>
<td>$ —</td>
</tr>
</tbody>
</table>

Total gains and losses (realized and unrealized):
- Included in selling, general and administrative expenses: $ — | $ — | $ 0.4 |
- Purchases, sales, issuances, and settlements, net: $ 19.2 | $ 1.4 | $ (0.5) |

Balance at September 30, 2011: $ 19.2 | $ 1.4 | $ (0.1)
4. FINANCING RECEIVABLES AND ALLOWANCE FOR CREDIT LOSSES

A financing receivable is a contractual right to receive money, on demand or on fixed or determinable dates, that is recognized as an asset in the creditor’s balance sheet. The Company’s financing receivables, consisting of its short-term investment, notes receivable, and accounts receivable with contractual maturities of more than one year, and the related allowance for doubtful accounts, are presented in the following table:

<table>
<thead>
<tr>
<th>September 30, 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts receivable with contractual maturities of more than one year:</td>
</tr>
<tr>
<td>Gross amount</td>
</tr>
<tr>
<td>Allowance for doubtful accounts</td>
</tr>
<tr>
<td>Net amount</td>
</tr>
<tr>
<td>Amount past due</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Notes receivable:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Note receivable from related party</td>
</tr>
<tr>
<td>Total note receivable</td>
</tr>
<tr>
<td>Amount past due</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Short-term investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total short-term investment</td>
</tr>
<tr>
<td>Amount past due</td>
</tr>
</tbody>
</table>

1 Represents a loan to CPTC. See Note 16, “Variable Interest Entity.”

During fiscal year 2011, the Company sold $3.6 million of accounts receivable with contractual maturities of more than one year. There was no activity in the allowance for doubtful financing receivable accounts during fiscal year 2011.

5. GOODWILL AND INTANGIBLE ASSETS

The following table reflects the gross carrying amount and accumulated amortization of the Company’s intangible assets included in “Other assets” in the Consolidated Balance Sheets as follows:

<table>
<thead>
<tr>
<th>Intangible Assets:</th>
<th>September 30, 2011</th>
<th>October 1, 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquired existing technology</td>
<td>$ 26.0</td>
<td>$ 20.7</td>
</tr>
<tr>
<td>Patents, licenses and other</td>
<td>19.6</td>
<td>18.9</td>
</tr>
<tr>
<td>Customer contracts and supplier relationship</td>
<td>10.4</td>
<td>10.4</td>
</tr>
<tr>
<td>Accumulated amortization</td>
<td>(43.7)</td>
<td>(40.8)</td>
</tr>
<tr>
<td>Net carrying amount</td>
<td>$ 12.3</td>
<td>$ 9.2</td>
</tr>
</tbody>
</table>

Amortization expense for intangible assets was $2.9 million, $3.3 million and $3.6 million for fiscal years 2011, 2010 and 2009, respectively. The Company estimates amortization expense on a straight-line basis for fiscal years 2012 through 2016 and thereafter, will be as follows (in millions): $2.4, $2.0, $1.2, $0.9 and $5.8, respectively.
The following table reflects the activity of goodwill by reportable operating segment:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Oncology</th>
<th>X-ray Products</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at October 2, 2009</td>
<td>$126.7</td>
<td>$2.7</td>
<td>$80.9</td>
<td>$210.3</td>
</tr>
<tr>
<td>Payment and/or accrual of contingent</td>
<td>—</td>
<td>1.8</td>
<td>—</td>
<td>1.8</td>
</tr>
<tr>
<td>Foreign currency translation</td>
<td>—</td>
<td>—</td>
<td>(3.6)</td>
<td>(3.6)</td>
</tr>
<tr>
<td>adjustments</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance at October 1, 2010</td>
<td>126.7</td>
<td>4.5</td>
<td>77.3</td>
<td>208.5</td>
</tr>
<tr>
<td>Acquisition of businesses</td>
<td>3.4</td>
<td>—</td>
<td>—</td>
<td>3.4</td>
</tr>
<tr>
<td>Payment and/or accrual of contingent</td>
<td>0.4</td>
<td>1.7</td>
<td>—</td>
<td>2.1</td>
</tr>
<tr>
<td>foreign currency translation</td>
<td>—</td>
<td>(0.1)</td>
<td>—</td>
<td>(0.1)</td>
</tr>
<tr>
<td>adjustments</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Balance at September 30, 2011</td>
<td>$130.5</td>
<td>$6.1</td>
<td>$75.9</td>
<td>$212.5</td>
</tr>
</tbody>
</table>

6. RELATED PARTY TRANSACTIONS

VMS has a 40% ownership interest in dpiX Holding LLC (“dpiX Holding”), a two-member consortium which has a 100% ownership interest in dpiX LLC (“dpiX”), a supplier of amorphous silicon based thin-film transistor arrays (“flat panels”) for the Company’s X-ray Products’ digital image detectors and for its Oncology Systems’ On-Board Imager ® (“OBI”), and PortalVision ™ imaging products. In accordance with the dpiX Holding agreement, net losses were to be allocated to the members, in succession, until their capital accounts equaled zero, then to the members in accordance with their ownership interests. The dpiX Holding agreement also provided that net profits were to be allocated to the members, in succession, until their capital accounts equaled the net losses previously allocated, then to the members in accordance with their ownership interests.

The equity investment in dpiX Holding is accounted for under the equity method of accounting. When VMS recognizes its share of net profits or losses of dpiX Holding, profits in inventory purchased from dpiX are eliminated until realized by VMS. In fiscal year 2011, VMS recorded a gain on the equity investment in dpiX Holding of $4.3 million. In fiscal year 2010, VMS recorded a loss on the equity investment in dpiX Holding of $0.7 million. In fiscal year 2009, VMS recorded a loss on the equity investment in dpiX Holding of $0.9 million. Incomes and losses on the equity investment in dpiX Holding are included in “Selling, general and administrative” expenses in the Consolidated Statements of Earnings. The carrying value of the equity investment in dpiX Holding, which was included in “Other assets” in the Consolidated Balance Sheets, was $46.7 million at September 30, 2011, $45.1 million at October 1, 2010. In February 2009, VMS agreed to loan $14 million to dpiX in four separate installments. The loan bears interest at prime plus 1% per annum. The principal balance is due and payable to VMS in four installments beginning in December 2011; interest is payable in full according to a quarterly schedule that began in April 2009; and the entire principal balance, together with accrued and unpaid interest thereon and all other related amounts payable thereunder, is due and payable on September 10, 2012. As of September 30, 2011, VMS had loaned $8.8 million to dpiX under this loan agreement, which was included in “Prepaid expenses and other current assets” in the Consolidated Balance Sheets. As of October 1, 2010, VMS had loaned $8.8 million to dpiX under this loan agreement, which was included in “Other assets” in the Consolidated Balance Sheets. The Company evaluates the collectability of its note receivable with dpiX at least on a quarterly basis, considering the timeliness of recurring payments as well as its financial position and cash flows, and would recognize an impairment loss for any amount the Company deemed uncollectible.
During fiscal years 2011, 2010 and 2009, the Company purchased glass transistor arrays from dpiX totaling approximately $23.3 million, $34.6 million and $26.4 million, respectively. These purchases of glass transistor arrays are included as a component of “Inventory” in the Consolidated Balance Sheets and “Cost of revenues—product” in the Consolidated Statements of Earnings for these fiscal years.

7. LONG-TERM DEBT

Long-term debt outstanding is summarized as follows:

<table>
<thead>
<tr>
<th>(Dollars in millions)</th>
<th>September 30, 2011</th>
<th>October 1, 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unsecured term loan, 6.70% due in installments of $6.25 payable in fiscal years 2012 and 2014</td>
<td>$12.5</td>
<td>$12.5</td>
</tr>
<tr>
<td>Unsecured term loan, 6.76% due in installments of $5.25 was fully paid in fiscal year 2011</td>
<td>—</td>
<td>5.3</td>
</tr>
<tr>
<td>Loan assumed through purchase of land and building, 7.58% was fully paid in fiscal year 2011</td>
<td>—</td>
<td>1.9</td>
</tr>
<tr>
<td>Loan assumed through purchase of land and building, 7.34% payable in fiscal year 2012(1)</td>
<td>3.6</td>
<td>3.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>16.1</strong></td>
<td><strong>23.4</strong></td>
</tr>
<tr>
<td>Less: current maturities of long-term debt</td>
<td>9.9</td>
<td>5.5</td>
</tr>
<tr>
<td><strong>Long-term debt</strong></td>
<td><strong>$6.2</strong></td>
<td><strong>$17.9</strong></td>
</tr>
</tbody>
</table>

(1) As of September 30, 2011, land and buildings with a carrying amount of $7.8 million were pledged as collateral against these loans.

The term loan agreements contain a covenant that requires the Company to pay prepayment penalties if the Company elects to pay off this debt before the maturity dates and the market interest rate is lower than the fixed interest rates of the debt at the time of repayment. They also contain covenants that limit future borrowings and cash dividend payments and require the Company to maintain specified levels of working capital and operating results. For all fiscal years presented within these consolidated financial statements, the Company was in compliance with all restrictive covenants of the unsecured term loan agreements.

Interest paid on long-term debt was $1.5 million for fiscal year 2011, $2.1 million for fiscal year 2010 and $2.6 million for fiscal year 2009. At September 30, 2011, aggregate debt maturities for fiscal years 2012, 2013 and 2014 were as follows (in millions): $9.9, $0.0 and $6.2, respectively. All debt is due in full by fiscal year 2014.

The fair value of the Company’s long-term debt was estimated to be $17.2 million at September 30, 2011 and $25.4 million at October 1, 2010. The estimated fair value of long-term debt was based on the then-current rates available to the Company for debt of similar terms and remaining maturities and also took into consideration default and credit risk. The Company determined the estimated fair value amount by using available market information and commonly accepted valuation methodologies. However, considerable judgment is required in interpreting market data to develop estimates of fair value. Accordingly, the fair value estimate presented herein is not necessarily indicative of the amount that the Company or holders of the instruments could realize in a current market exchange. The use of different assumptions and/or estimation methodologies may have a material effect on the estimated fair value.
VARIAN MEDICAL SYSTEMS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

8. CREDIT FACILITIES

VMS has a credit agreement with Bank of America, N.A. (“BofA”). As amended to date, the credit agreement with BofA provides for a revolving credit facility that enables the Company to borrow and have outstanding at any given time a maximum of $300 million (the “Amended BofA Credit Facility”). A portion of the Amended BofA Credit Facility is collateralized with a pledge of stock of certain of VMS’s present and future subsidiaries that are deemed to be material subsidiaries. As of September 30, 2011, VMS had pledged to BofA 65% of the voting shares that it holds in Varian Medical Systems Nederland B.V., a wholly-owned subsidiary.

Under the Amended BofA Credit Facility, VMS’s Japanese subsidiary (“VMS KK”) can borrow up to 2.7 billion Japanese Yen as part of the overall credit facility (the “Japanese Line of Credit”). At any time amounts are outstanding under the Japanese Line of Credit, the full borrowing capacity is deemed committed for use in Japan and therefore the maximum amount VMS can otherwise borrow under the Amended BofA Credit Facility will be reduced by $35 million to $265 million. VMS guarantees the payment of the outstanding balance under the Japanese Line of Credit.

The Amended BofA Credit Facility may be used for working capital, capital expenditures, permitted VMS share repurchases, permitted acquisitions and other lawful corporate purposes. Borrowings under the Japanese Line of Credit can be used by VMS KK for refinancing certain intercompany debts, working capital, capital expenditures and other lawful corporate purposes. Borrowings under the Amended BofA Credit Facility (outside of the Japanese Line of Credit) accrue interest either (i) based on the London Interbank Offered Rate (“LIBOR”) plus a margin of 0.75% to 1.25% based on a leverage ratio involving funded indebtedness and earnings before interest, taxes, depreciation and amortization (“EBITDA”) or (ii) based upon a base rate of either the federal funds rate plus 0.5% or BofA’s announced prime rate, whichever is greater, minus a margin of 0.5% to 0% based on a leverage ratio involving funded indebtedness and EBITDA, depending upon the Company’s instructions to BofA. The Company may select borrowing periods of one, two, three or six months for advances based on the LIBOR rate. Interest rates on advances based on the base rate are adjustable daily. Under the Amended BofA Credit Facility, the Company pays commitment fees at an annual rate of 0.2% to 0.3% based on a leverage ratio involving funded indebtedness and EBITDA. Borrowings under the Japanese Line of Credit accrue interest at the basic loan rate announced by the Bank of Japan plus a margin of 1.25% to 1.50% based on a leverage ratio involving funded indebtedness and EBITDA. The Amended BofA Credit Facility, as well as the Japanese Line of Credit, will expire on June 30, 2012, if not extended by mutual agreement of VMS and BofA.

At September 30, 2011, a total of $181 million was outstanding under the Amended BofA Credit Facility with a weighted average interest rate of 1.05%, none of which was outstanding under the Japanese Line of Credit. At October 1, 2010, $20 million was outstanding under the Amended BofA Credit Facility with a weighted average interest rate of 1.51%, none of which was outstanding under the Japanese Line of Credit. For fiscal years 2011, 2010 and 2009, the Company paid commitment fees of $332,000, $231,000 and $256,000, respectively. Up to $25 million of the Amended BofA Credit Facility can be used to support letters of credit issued on behalf of the Company, of which none were outstanding as of September 30, 2011 or October 1, 2010.

The Amended BofA Credit Facility contains customary affirmative and negative covenants for facilities of this type. The Company has also agreed to maintain certain financial covenants relating to (i) leverage ratios involving funded indebtedness and EBITDA, (ii) liquidity and (iii) consolidated assets. For all fiscal years presented within these consolidated financial statements, the Company was in compliance with all covenants.
In March 2011, VMS KK entered into an unsecured overdraft agreement with Sumitomo Mitsui Banking Corporation that enables VMS KK to borrow a maximum of 500 million Japanese Yen (the “Japanese Overdraft Facility”). Borrowings under the Japanese Overdraft Facility accrued interest at 0.81% per annum. The Japanese Overdraft Facility expired on June 30, 2011. As of September 30, 2011, there was no outstanding balance under the Japanese Overdraft Facility.

Interest paid on amounts outstanding under credit facilities were $0.8 million, $0.3 million and $0.2 million in fiscal years 2011, 2010 and 2009, respectively.

9. DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES

The Company measures all derivatives at fair value on the Consolidated Balance Sheets. The accounting for gains or losses resulting from changes in the fair value of those derivatives depends upon the use of the derivative and whether it qualifies for hedge accounting. Changes in the fair value of derivatives that do not qualify for hedge accounting treatment must be recognized in earnings, together with elements excluded from effectiveness testing and the ineffective portion of a particular hedge.

The fair values of derivative instruments reported on the Company’s Consolidated Balance Sheets were as follows:

<table>
<thead>
<tr>
<th>(In millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Balance Sheet</td>
</tr>
<tr>
<td>September 30,</td>
</tr>
<tr>
<td>Liability</td>
</tr>
<tr>
<td>September 30,</td>
</tr>
</tbody>
</table>

Derivative designated as hedging instruments:
- Foreign exchange forward contracts (Prepaid Expenses $ — $ — $ — $ 0.5)
- Accrued liabilities $ — $ — $ 0.5

Derivative not designated as hedging instruments:
- Foreign exchange forward contracts (Prepaid Expenses $ — $ — $ — $ 0.5)
- Accrued liabilities $ — $ — $ 0.5

Total derivatives $ — $ — $ — $ 0.5

See Note 3, “Fair Value” and “Valuation of Derivative Instruments” under Critical Accounting Estimates in Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” regarding valuation of the Company’s derivative instruments. Also see Note 1, “Summary of Significant Accounting Policies” to the Consolidated Financial Statements regarding credit risk associated with the Company’s derivative instruments.

Cash Flow Hedging Activities

The Company has many transactions denominated in foreign currencies and addresses certain of those financial exposures through a risk management program that includes the use of derivative financial
instruments. The Company sells products throughout the world, often in the currency of the customer’s country, and may hedge certain of the larger foreign currency transactions when they are either not denominated in the relevant subsidiary’s functional currency or the U.S. dollar. These foreign currency sales transactions are hedged using foreign currency forward contracts. The Company may use other derivative instruments in the future. The Company enters into foreign currency forward contracts primarily to reduce the effects of fluctuating foreign currency exchange rates. The Company does not enter into foreign currency forward contracts for speculative or trading purposes. The foreign currency forward contracts range from one to twelve months in maturity. As of September 30, 2011, the Company did not have any foreign currency forward contracts with an original maturity greater than twelve months.

The hedges of foreign currency denominated forecasted revenues are accounted for in accordance with ASC 815, pursuant to which the Company has designated its hedges of forecasted foreign currency revenues as cash flow hedges. The Company’s designated cash flow hedges de-designate when the anticipated revenues associated with the transactions are recognized and the effective portion in “Accumulated other comprehensive loss” in the Consolidated Balance Sheets is reclassified to “Revenues” in the Consolidated Statements of Earnings. Subsequent changes in fair value of the derivative instrument are recorded in “Selling, general and administrative expenses” in the Consolidated Statements of Earnings to offset changes in fair value of the resulting non-functional currency receivables. For derivative instruments that are designated and qualified as cash flow hedges under ASC 815, the Company formally documents for each derivative instrument at the hedge’s inception the relationship between the hedging instrument (foreign currency forward contract) and hedged item (forecasted foreign currency revenues), the nature of the risk being hedged, as well as its risk management objective and strategy for undertaking the hedge. The Company records the effective portion of the gain or loss on the derivative instrument designated and qualified as cash flow hedges in “Accumulated other comprehensive loss” in the Consolidated Balance Sheets and reclassifies these amounts into “Revenues” in the Consolidated Statements of Earnings in the period during which the hedged transaction is recognized in earnings. The Company assesses hedge effectiveness both at the onset of the hedge and on an ongoing basis using regression analysis. The Company measures hedge ineffectiveness by comparing the cumulative change in the fair value of the effective component of the hedge contract with the cumulative change in the fair value of the hedged item. The Company recognizes any over performance of the derivative as ineffectiveness in “Revenues,” and amounts not included in the assessment of effectiveness in “Cost of revenues” in the Consolidated Statements of Earnings. During fiscal years 2011, 2010 and 2009, the Company did not discontinue any cash flow hedges. At the inception of the hedge, the Company assesses whether the likelihood of meeting the forecasted cash flow is highly probable. As of September 30, 2011, all forecasted cash flows were still probable to occur. As of October 1, 2010, net unrealized loss on derivative instruments before tax, of $502,000, was included in “Accumulated other comprehensive loss” in the Consolidated Balance Sheets. As of September 30, 2011, net unrealized loss on derivative instruments before tax, of $11,000, was included in “Accumulated other comprehensive loss” in the Consolidated Balance Sheets and is expected to be reclassified to earnings over the twelve months that follow.
The Company had the following outstanding foreign currency forward contracts that were entered into to hedge forecasted revenues and designated as a cash flow hedge:

At September 30, 2011, the notional value of the outstanding foreign currency forward contracts is as follows:

(In millions)

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Japanese yen</td>
<td>20.1</td>
</tr>
</tbody>
</table>

The following table presents the amounts, before tax, recognized in “Accumulated other comprehensive loss” in the Consolidated Balance Sheets and in the Consolidated Statements of Earnings that are related to the effective portion of the foreign currency forward contracts designated as cash flow hedges:

<table>
<thead>
<tr>
<th></th>
<th>Fiscal Years</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gain (Loss) Recognized in Other Comprehensive Income (Effective Portion)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign exchange contracts</td>
<td>2011</td>
<td>-0.5</td>
<td>0.4</td>
<td>6.8</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Fiscal Years</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location of Gain (Loss) Reclassified from Accumulated Other Comprehensive Income into Net Earnings (Effective Portion)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenues</td>
<td></td>
<td>(1.0)</td>
<td>0.9</td>
<td>6.0</td>
</tr>
</tbody>
</table>

The following table presents the amounts recognized in the Consolidated Statements of Earnings that are related to (i) the ineffective portion of the cash flow hedges and (ii) the amount excluded from effectiveness testing of the cash flow hedges:

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ineffective portion of cash flow hedges — Gain (Loss)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amount excluded from assessment of effectiveness of cash flow hedges — Gain (Loss)</td>
<td></td>
<td></td>
<td>(0.1)</td>
</tr>
</tbody>
</table>

Balance Sheet Hedging Activities

The Company also hedges balance sheet exposures from its various subsidiaries and business units where the U.S. dollar is the functional currency. The Company enters into foreign currency forward contracts to minimize the short-term impact of foreign currency fluctuations on monetary assets and liabilities denominated in currencies other than the U.S. dollar functional currency. The foreign currency forward contracts are short term in nature, typically with maturity of approximately one month, and are based on the net forecasted balance sheet exposure. These hedges of foreign-currency-denominated assets and liabilities do not qualify for hedge accounting treatment and are not designated as hedging instruments under ASC 815. For derivative instruments not designated as hedging instruments, changes in their fair values are recognized in “Selling, general and administrative expenses” in the Consolidated Statements of Earnings. Changes in the values of these hedging instruments are offset by changes in the values of foreign-currency-denominated assets and liabilities. Variations from the forecasted foreign currency assets or liabilities, coupled with a significant currency rate movement, may result in a material gain or loss if the hedges are not effectively offsetting the change in value of the foreign currency asset or liability. Other than foreign exchange hedging activities, the Company has no other free-standing or embedded derivative instruments.
The Company had the following outstanding foreign currency forward contracts that were entered into to hedge balance sheet exposures from its various foreign subsidiaries and business units:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Notional Value Sold</th>
<th>Notional Value Purchased</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian dollar</td>
<td>$17.1</td>
<td>$—</td>
</tr>
<tr>
<td>British pound</td>
<td>—</td>
<td>18.4</td>
</tr>
<tr>
<td>Danish krone</td>
<td>1.4</td>
<td>—</td>
</tr>
<tr>
<td>Euro</td>
<td>137.1</td>
<td>14.9</td>
</tr>
<tr>
<td>New Zealand dollar</td>
<td>3.1</td>
<td>—</td>
</tr>
<tr>
<td>Norwegian krone</td>
<td>7.4</td>
<td>—</td>
</tr>
<tr>
<td>Japanese yen</td>
<td>39.4</td>
<td>—</td>
</tr>
<tr>
<td>Swedish krone</td>
<td>2.4</td>
<td>—</td>
</tr>
<tr>
<td>Swiss franc</td>
<td>—</td>
<td>34.6</td>
</tr>
<tr>
<td>Totals</td>
<td>$207.9</td>
<td>$67.9</td>
</tr>
</tbody>
</table>

The following table presents the gains (losses) recognized in the Consolidated Statements of Earnings related to the foreign currency forward exchange contracts that are not designated as hedging instruments under ASC 815.

<table>
<thead>
<tr>
<th>Location of Gain or (Loss) Recognized in Income on Derivative</th>
<th>Amount of Gain or (Loss) Recognized in Net Earnings on Derivative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selling, general and administrative expenses</td>
<td>$2.3</td>
</tr>
<tr>
<td></td>
<td>$10.1</td>
</tr>
<tr>
<td></td>
<td>$(2.0)</td>
</tr>
</tbody>
</table>

The gains (losses) on these derivative instruments were significantly offset by the gains (losses) resulting from the remeasurement of monetary assets and liabilities denominated in currencies other than the U.S. dollar functional currency.

**Contingent Features**

Certain of the Company’s derivative instruments are subject to a master netting agreement which contains provisions that require the Company, in the event of a default, to settle the outstanding contracts in net liability positions by making settlement payments in cash or by setting off amounts owed to the counterparty against any credit support or collateral held by the counterparty. The counterparty’s right of set-off is not limited to the derivative instruments and applies to other rights held by the counterparty. Pursuant to the master netting agreement, an event of default includes the Company’s failure to pay the counterparty under the derivative instruments, voluntary or involuntary bankruptcy, the Company’s failure to repay an aggregate of $25 million or more in debts, and deterioration of creditworthiness of the surviving entity when the Company merges or transfers its assets or liabilities to another entity. As of September 30, 2011 and October 1, 2010, the Company did not have significant outstanding derivative instruments with credit-risk-related contingent features that were in a net liability position.
10. COMMITMENTS AND CONTINGENCIES

Indemnification Agreements
In conjunction with the sale of the Company’s products in the ordinary course of business, the Company provides standard indemnification of business partners and customers for losses suffered or incurred for property damages, death and injury and for patent, copyright or any other intellectual property infringement claims by any third parties with respect to its products. The terms of these indemnification arrangements are generally perpetual. Except for losses related to property damages, the maximum potential amount of future payments the Company could be required to make under these arrangements is unlimited. As of September 30, 2011, the Company had not incurred any significant costs since the Spin-offs to defend lawsuits or settle claims related to these indemnification arrangements. As a result, the Company believes the estimated fair value of these arrangements is minimal.

VMS has entered into indemnification agreements with its directors and officers and certain of its employees that serve as officers or directors of its foreign subsidiaries that may require VMS to indemnify its directors and officers and those certain employees against liabilities that may arise by reason of their status or service as directors or officers, and to advance their expenses incurred as a result of any legal proceeding against them as to which they could be indemnified.

Product Warranty
The Company discloses estimated future costs of warranty obligations in accordance with ASC 460-10, which requires an entity to disclose and recognize a liability for the fair value of the obligation it assumes upon issuance of a guarantee. The Company warrants most of its products for a specific period of time, usually twelve months, against material defects. The Company provides for the estimated future costs of warranty obligations in cost of revenues when the related revenues are recognized. The accrued warranty costs represent the best estimate at the time of sale of the total costs that the Company will incur to repair or replace product parts that fail while still under warranty. The amount of the accrued estimated warranty costs obligation for established products is primarily based on historical experience as to product failures adjusted for current information on repair costs. For new products, estimates include the historical experience of similar products, as well as reasonable allowance for warranty expenses associated with new products. On a quarterly basis, the Company reviews the accrued warranty costs and updates the historical warranty cost trends, if required.

The following table reflects the changes in the Company’s accrued product warranty:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Fiscal Years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2011</td>
</tr>
<tr>
<td>Accrued product warranty, beginning of period</td>
<td>$ 53.2</td>
</tr>
<tr>
<td>Charged to cost of revenues</td>
<td>45.1</td>
</tr>
<tr>
<td>Actual product warranty expenditures</td>
<td>(48.2)</td>
</tr>
<tr>
<td>Accrued product warranty, end of period</td>
<td>$ 50.1</td>
</tr>
</tbody>
</table>

Lease Commitments
At September 30, 2011, the Company was committed to minimum rentals under noncancelable operating leases (including rent escalation clauses) for fiscal years 2012, 2013, 2014, 2015, 2016 and thereafter, as follows (in millions): $15.2, $12.2, $7.9, $5.4, $3.4 and $3.9, respectively. Rental expenses for fiscal years 2011, 2010 and 2009 (in millions) were $23.8, $23.5 and $22.3, respectively.
Other Commitments

In September 2011, the Company, through its Swiss subsidiary, participated in a $165 million loan facility for CPTC, under which the subsidiary committed to loan up to $115 million to finance the construction and start-up operations of a proton therapy center. See Note 16, “Variable Interest Entity” for a detailed discussion.

In September 2011, the Company entered into a commercial agreement in which the Company agreed to resell a third party company’s products. As part of that agreement, the Company agreed to make guaranteed prepayments of $67 million to that third party for orders of their products that the Company will resell to end user customers. Of this $67 million, the Company will make $46 million in guaranteed prepayments during fiscal year 2012 and $21 million in guaranteed prepayments in fiscal year 2013.

Contingencies

Environmental Remediation Liabilities

The Company’s operations and facilities, past and present, are subject to environmental laws, including laws that regulate the handling, storage, transport and disposal of hazardous substances. Certain of those laws impose cleanup liabilities under certain circumstances. In connection with those laws and certain of the Company’s past and present operations and facilities, the Company oversees various environmental cleanup projects and also reimburses certain third parties for cleanup activities. Those include facilities sold as part of the Company’s electron devices business in 1995 and thin film systems business in 1997. In addition, the U.S. Environmental Protection Agency (“EPA”) or third parties have named the Company as a potentially responsible party under the amended Comprehensive Environmental Response Compensation and Liability Act of 1980 (“CERCLA”), at sites to which the Company or the facilities of the sold businesses were alleged to have shipped waste for recycling or disposal (the “CERCLA sites”). In connection with the CERCLA sites, the Company to date has been required to pay only modest amounts as its contributions to cleanup efforts. Under the agreement that governs the Spin-offs, VI and VSEA are each obligated to indemnify the Company for one-third of the environmental cleanup costs associated with corporate, discontinued or sold operations prior to the Spin-offs (after adjusting for any insurance proceeds or tax benefits received by the Company), as well as fully indemnify the Company for other liabilities arising from the operations of the business transferred to it as part of the Spin-offs.

The Company spent $1.3 million, $1.3 million and $1.0 million (net of amounts borne by VI and VSEA) during fiscal years 2011, 2010 and 2009, respectively, on environmental cleanup costs, third-party claim costs, project management costs and legal costs. Inherent uncertainties make it difficult to estimate the likelihood of the cost of future cleanup, third-party claims, project management and legal services for the CERCLA sites and one of the Company’s past facilities. Nonetheless, as of September 30, 2011, the Company estimated that, net of VI’s and VSEA’s indemnification obligations, future costs associated with the CERCLA sites and this facility would range in total from $2.1 million to $9.4 million. The time frames over which these cleanup project costs are estimated vary, ranging from one year up to thirty years as of September 30, 2011. Management believes that no amount in that range is more probable of being incurred than any other amount and therefore accrued $2.1 million for these cleanup projects as of September 30, 2011. The accrued amount has not been discounted to present value due to the uncertainties that make it difficult to develop a single best estimate.

The Company believes it has gained sufficient knowledge to better estimate the scope and cost of monitoring, cleanup and management activities for its other past and present facilities. This, in part, is
based on agreements with other parties and also cleanup plans approved by or completed in accordance with the requirements of the governmental agencies having jurisdiction. As of September 30, 2011, the Company estimated that the Company’s future exposure, net of VI’s and VSEA’s indemnification obligations, for the costs at these facilities, and reimbursements of third party’s claims for these facilities, ranged in total from $6.3 million to $38.0 million. The time frames over which these costs are estimated to be incurred vary, ranging from one year to thirty years as of September 30, 2011. As to each of these facilities, management determined that a particular amount within the range of estimated costs was a better estimate than any other amount within the range, and that the amount and timing of these future costs were reliably determinable. The best estimate within that range was $14.3 million at September 30, 2011. Accordingly, the Company has accrued $10.6 million for these costs, which represents the best estimate discounted at 4%, net of inflation. This accrual is in addition to the $2.1 million described in the preceding paragraph.

The table that follows presents information about the Company’s reserve for future environmental costs at September 30, 2011, based on estimates as of that date.

<table>
<thead>
<tr>
<th>Fiscal Years:</th>
<th>Recurring Costs</th>
<th>Non-Recurring Costs</th>
<th>Total Anticipated Future Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>$ 1.2</td>
<td>$ 0.8</td>
<td>$ 2.0</td>
</tr>
<tr>
<td>2013</td>
<td>0.6</td>
<td>0.5</td>
<td>1.1</td>
</tr>
<tr>
<td>2014</td>
<td>0.6</td>
<td>0.4</td>
<td>1.0</td>
</tr>
<tr>
<td>2015</td>
<td>0.7</td>
<td>0.3</td>
<td>1.0</td>
</tr>
<tr>
<td>2016</td>
<td>0.7</td>
<td>1.1</td>
<td>1.8</td>
</tr>
<tr>
<td>Thereafter</td>
<td>7.5</td>
<td>2.0</td>
<td>9.5</td>
</tr>
<tr>
<td>Total costs</td>
<td>$ 11.3</td>
<td>$ 5.1</td>
<td>$ 16.4</td>
</tr>
</tbody>
</table>

Less imputed interest (3.7)
Reserve amount $ 12.7

Recurring costs include expenses for such tasks as the ongoing operation, maintenance and monitoring of cleanup. Non-recurring costs include expenses for such tasks as soil excavation and treatment, installation of injection and monitoring wells, other costs for soil and groundwater treatment by injection, construction of ground and surface water treatment systems, soil and groundwater investigation, governmental agency costs required to be reimbursed by the Company, removal and closure of treatment systems and monitoring wells, and the defense and settlement of pending and anticipated third-party claims.

These amounts are only estimates of anticipated future costs. The amounts the Company will actually spend may be greater or less than these estimates, even as the Company believes the degree of uncertainty will narrow as cleanup activities progress. While the Company believes its reserve is adequate, as the scope of the Company’s obligations becomes more clearly defined, the Company may modify the reserve, and charge or credit future earnings accordingly. Nevertheless, based on information currently known to management, and assuming VI and VSEA satisfy their indemnification obligations, management believes the costs of these environmental-related matters are not reasonably likely to have a material adverse effect on the consolidated financial statements of the Company in any one fiscal year.

The Company evaluates its liability for investigation and cleanup costs in light of the obligations and apparent financial strength of potentially responsible parties and insurance companies with respect to which the Company believes it has rights to indemnity or reimbursement. The Company has asserted

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claims for recovery of environmental investigation and cleanup costs already incurred, and to be incurred in the future against various insurance
companies and other third parties. The Company receives certain cash payments in the form of settlements and judgments from defendants,
insurers and other third parties from time to time. The Company has also reached an agreement with an insurance company under which that
insurer has agreed to pay a portion of the Company’s past and future environmental-related expenditures. The Company recorded receivables,
from that insurer, of $3.0 million both at September 30, 2011 and at October 1, 2010 with the respective current portion included in “Prepaid
expenses and other current assets” and the respective noncurrent portion included in “Other assets” in the Consolidated Balance Sheets. The
Company believes that this receivable is recoverable because it is based on a binding, written settlement agreement with what appears to be a
financially viable insurance company, and the insurance company has paid the Company’s claims in the past.

The availability of the indemnities of VI and VSEA will depend upon the future financial strength of VI and VSEA. Given the long-term nature
of some of the liabilities, VI and VSEA may be unable to fund the indemnities in the future. It is also possible that a court would disregard this
contractual allocation among the parties and require the Company to assume responsibility for obligations allocated to another party, particularly
if the other party were to refuse or was unable to pay any of its allocated share. The agreement governing the Spin-offs generally provides that if
a court prohibits a company from satisfying its shared indemnification obligations, the indemnification obligations will be shared equally by the
two other companies.

**Acquisition-Related Commitments/Obligations**

When the Company acquired ACCEL in January 2007, ACCEL was involved in a contract-related lawsuit, which the Company settled by
agreeing to perform certain commissioning services for a proton therapy system for a fixed price contract for a fixed price contract (the “Fixed
Price Contract”). As of October 2, 2009, the Company had a loss accrual of €7.6 million related to the Fixed Price Contract. In the first quarter of
fiscal year 2010, the Company entered into a new contract (the “New Contract”) to perform certain services for a fixed price. The balance of the
loss accrual related to this contingency (the New Contract) was €1.0 million as of September 30, 2011. If the actual costs related to the
contingency exceed the estimated amount or if the estimated loss increases, the variances will be recognized in the Consolidated Statements of
Earnings in the periods in which these variances arise.

**Other Matters**

From time to time, the Company is a party to or otherwise involved in legal proceedings, claims and government inspections or investigations
and other legal matters, both in and outside the United States, arising in the ordinary course of its business or otherwise. Such matters are subject
to many uncertainties and outcomes are not predictable with assurance. The Company accrues amounts, to the extent they can be reasonably
estimated, that it believes are adequate to address any liabilities related to legal proceedings and other loss contingencies that the Company
believes will result in a probable loss. While there can be no assurances as to the ultimate outcome of any legal proceeding or other loss
contingency involving the Company, management does not believe any pending matter will be resolved in a manner that would have a material
adverse effect on the Company’s consolidated financial position, results of operations or cash flows.
11. RETIREMENT PLANS

The Company sponsors the Varian Medical Systems, Inc. Retirement Plan (the “Retirement Plan”)—a defined contribution plan that is available to substantially all of its employees in the United States. Under Section 401(k) of the Internal Revenue Code, the Retirement Plan allows for tax-deferred salary contributions by eligible employees.

Participants can contribute from 1% to 40% of their eligible base compensation to the Retirement Plan (up to 25% on a pre-tax basis and an additional 15% on an after-tax basis) and all or a portion of his or her bonus under the Employee Incentive Plan. However, participant contributions are limited to a maximum annual amount as determined periodically by the Internal Revenue Service. The Company matches eligible participant contributions dollar for dollar for the first 6% of eligible base compensation or bonus (for those employees with one or more years of service with the Company). All matching contributions vest immediately. The Retirement Plan allows participants to invest up to 25% of their contributions in shares of VMS common stock as an investment option.

The Company also sponsors five defined benefit pension plans for regular full-time employees in Germany, Japan, Switzerland and the United Kingdom. In fiscal year 2009, the Company terminated one pension plan in Germany as a result of the sale of Research Instruments. In July 2007, the Company (i) terminated the accrual of additional benefits for existing participants and (ii) suspended the enrollment of new participants under the defined benefit pension plan in the United Kingdom (the “U.K. Pension Plan”). The Company did not make any changes to the participants’ accrued retirement pensions, including the continuing linkage to future salary growth. At the same time, the Company established a defined contribution plan that is available to regular full-time employees in the United Kingdom (the “U.K. Savings Plan”).

Participants can contribute from 1% to 100% of their eligible base compensation to the U.K. Savings Plan. The Company matches participant contributions up to 6% of participants’ eligible base compensation, based on the participants’ level of contributions under this UK Savings Plan. For the first and second years after the establishment of the U.K. Savings Plan, the Company also matched an additional 2% and 1%, respectively, of eligible base compensation when the participants contributed 6% or more of their eligible base compensation. All matching contributions vest immediately. The Company also sponsors a post-retirement benefit plan that provides healthcare benefits to certain eligible retirees in the United States.

The Company recognizes the funded status of its defined benefit pension and post-retirement benefit plans on its Consolidated Balance Sheets. Each overfunded plan is recognized as an asset, and each underfunded plan is recognized as a liability. Unrecognized prior service costs or credits and net actuarial gains or losses, as well as subsequent changes in the funded status are recognized as a component of “Accumulated other comprehensive loss” within Stockholders’ Equity.

In fiscal year 2009, the Company adopted the measurement date provisions pursuant to ASC 715, which requires the Company to measure the assets and obligations of its defined benefit pension and post-retirement benefit plans to determine their funded status as of the end of the Company’s fiscal year. As a result of the adoption of the measurement date provisions, the Company recorded a charge to “Retained earnings” of $122,000, net of tax, and a benefit to “Accumulated other comprehensive loss” of $69,000, net of tax, in fiscal year 2009.

Total retirement, post-retirement benefit plan and defined benefit plan expense for all retirement plans amounted to $24.0 million, $21.4 million and $18.8 million for fiscal years 2011, 2010 and 2009, respectively.
### Obligations and Funded Status

The following table presents the funded status of the defined benefit pension and post-retirement benefit plans:

<table>
<thead>
<tr>
<th></th>
<th>Defined Benefit Plans</th>
<th></th>
<th>Post-Retirement Benefit Plan</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Change in benefit obligation:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Benefit obligation—beginning of fiscal year</td>
<td>$141.1</td>
<td>$121.0</td>
<td>$5.9</td>
<td>$6.2</td>
</tr>
<tr>
<td>Service cost</td>
<td>3.7</td>
<td>2.4</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Interest cost</td>
<td>5.0</td>
<td>4.9</td>
<td>0.2</td>
<td>0.3</td>
</tr>
<tr>
<td>Plan participants’ contributions</td>
<td>6.7</td>
<td>6.3</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Actuarial (gain) loss</td>
<td>4.6</td>
<td>9.2</td>
<td>0.3</td>
<td>(0.1)</td>
</tr>
<tr>
<td>Foreign currency changes</td>
<td>5.4</td>
<td>4.3</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Benefit and expense payments</td>
<td>(6.0)</td>
<td>(7.0)</td>
<td>(0.5)</td>
<td>(0.5)</td>
</tr>
<tr>
<td>Benefit obligation—end of fiscal year</td>
<td>$160.5</td>
<td>$141.1</td>
<td>$5.9</td>
<td>$5.9</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Defined Benefit Plans</th>
<th></th>
<th>Post-Retirement Benefit Plan</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Change in plan assets:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plan assets—beginning of fiscal year</td>
<td>$113.1</td>
<td>$99.8</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Employer contributions</td>
<td>7.4</td>
<td>5.5</td>
<td>0.5</td>
<td>0.5</td>
</tr>
<tr>
<td>Actual return on plan assets/Adjustments</td>
<td>(0.1)</td>
<td>5.0</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Plan participants’ contributions</td>
<td>6.7</td>
<td>6.3</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Foreign currency changes</td>
<td>4.4</td>
<td>3.5</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Benefit and expense payments</td>
<td>(6.0)</td>
<td>(7.0)</td>
<td>(0.5)</td>
<td>(0.5)</td>
</tr>
<tr>
<td>Plan assets—end of fiscal year</td>
<td>$125.5</td>
<td>$113.1</td>
<td>—</td>
<td>—</td>
</tr>
</tbody>
</table>

### Funded status

<table>
<thead>
<tr>
<th></th>
<th>Defined Benefit Plans</th>
<th></th>
<th>Post-Retirement Benefit Plan</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Funded status</td>
<td>$ (35.0)</td>
<td>$ (28.0)</td>
<td>$ (5.9)</td>
<td>$ (5.9)</td>
</tr>
</tbody>
</table>

### Amounts recognized within the consolidated balance sheet:

<table>
<thead>
<tr>
<th></th>
<th>Defined Benefit Plans</th>
<th></th>
<th>Post-Retirement Benefit Plan</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Current liabilities</td>
<td>$ (0.1)</td>
<td>$ —</td>
<td>$ (0.5)</td>
<td>$ (0.5)</td>
</tr>
<tr>
<td>Noncurrent liabilities</td>
<td>(34.9)</td>
<td>(28.0)</td>
<td>(5.4)</td>
<td>(5.4)</td>
</tr>
<tr>
<td>Net amount recognized</td>
<td>$ (35.0)</td>
<td>$ (28.0)</td>
<td>$ (5.9)</td>
<td>$ (5.9)</td>
</tr>
</tbody>
</table>

The following table presents the amounts recognized in accumulated other comprehensive loss (before tax):

<table>
<thead>
<tr>
<th></th>
<th>Defined Benefit Plans</th>
<th></th>
<th>Post-Retirement Benefit Plan</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior service cost</td>
<td>$ (0.6)</td>
<td>$ (0.7)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Net gain (loss)</td>
<td>(53.3)</td>
<td>(45.8)</td>
<td>(0.6)</td>
<td>(0.4)</td>
</tr>
<tr>
<td>Accumulated other comprehensive loss</td>
<td>$ (53.9)</td>
<td>$ (46.5)</td>
<td>$ (0.6)</td>
<td>$ (0.4)</td>
</tr>
</tbody>
</table>
The following table presents the total fair value of plan assets, projected benefit obligation and accumulated benefit obligation for those defined benefit pension plans where accumulated benefit obligation exceeded the fair value of plan assets:

<table>
<thead>
<tr>
<th></th>
<th>September 30,</th>
<th>October 1,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2011</td>
<td>2010</td>
</tr>
<tr>
<td>Projected benefit obligation</td>
<td>$65.6</td>
<td>$64.9</td>
</tr>
<tr>
<td>Accumulated benefit obligation</td>
<td>$61.5</td>
<td>$63.2</td>
</tr>
<tr>
<td>Fair value of plan assets</td>
<td>$51.6</td>
<td>$51.8</td>
</tr>
</tbody>
</table>

The accumulated benefit obligation for all defined benefit pension plans was $132.1 million and $121.1 million at September 30, 2011 and October 1, 2010, respectively.

### Components of Net Periodic Benefit Cost and Other Amounts Recognized in Other Comprehensive (Income) Loss

The following table shows the components of the Company’s net periodic benefit costs and the other amounts recognized in other comprehensive (income) loss, before tax, related to the Company’s defined benefit pension plans and the Company’s post-retirement benefit plan:

<table>
<thead>
<tr>
<th></th>
<th>Defined Benefit Plans</th>
<th>Post-Retirement Benefit Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fiscal Years</td>
<td>Fiscal Years</td>
</tr>
<tr>
<td>Service cost</td>
<td>$3.7</td>
<td>$2.4</td>
</tr>
<tr>
<td>Interest cost</td>
<td>5.0</td>
<td>4.9</td>
</tr>
<tr>
<td>Settlement gain</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Expected return on assets</td>
<td>(4.9)</td>
<td>(4.8)</td>
</tr>
<tr>
<td>Amortization of transition obligation</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Amortization of prior service cost</td>
<td>0.1</td>
<td>0.1</td>
</tr>
<tr>
<td>Recognized actuarial loss</td>
<td>2.1</td>
<td>1.7</td>
</tr>
<tr>
<td>Net periodic benefit cost</td>
<td>6.0</td>
<td>4.3</td>
</tr>
</tbody>
</table>

### Other Amounts Recognized in Other Comprehensive (Income) Loss

<table>
<thead>
<tr>
<th></th>
<th>Defined Benefit Plans</th>
<th>Post-Retirement Benefit Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fiscal Years</td>
<td>Fiscal Years</td>
</tr>
<tr>
<td>Net (gain) loss arising during the year</td>
<td>9.6</td>
<td>9.1</td>
</tr>
<tr>
<td>Amortization of transition obligation</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Amortization of prior service cost</td>
<td>(0.1)</td>
<td>(0.1)</td>
</tr>
<tr>
<td>Amortization and settlement of net actuarial loss</td>
<td>(2.1)</td>
<td>(1.2)</td>
</tr>
<tr>
<td>Total recognized in other comprehensive (income) loss</td>
<td>7.4</td>
<td>7.3</td>
</tr>
<tr>
<td>Total recognized in net periodic benefit cost and other comprehensive loss</td>
<td>$13.4</td>
<td>$11.6</td>
</tr>
</tbody>
</table>
The amounts in “Accumulated other comprehensive loss” that are expected to be recognized as components of net periodic benefit cost during fiscal year 2012 are as follows:

### Table

<table>
<thead>
<tr>
<th></th>
<th>Defined Benefit Plans</th>
<th>Post-Retirement Benefit Plan</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior service cost</td>
<td>$(0.2)</td>
<td>0</td>
<td>$(0.2)</td>
</tr>
<tr>
<td>Net loss</td>
<td>$(2.5)</td>
<td>$(0.1)</td>
<td>$(2.6)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$(2.7)</strong>*</td>
<td><strong>$(0.1)</strong>*</td>
<td><strong>$(2.8)</strong>*</td>
</tr>
</tbody>
</table>

### Assumptions

The assumptions used to determine net periodic benefit cost and to compute the expected long-term return on assets for the Company’s defined benefit pension and post-retirement benefit plans were as follows:

#### Net Periodic Benefit Cost

<table>
<thead>
<tr>
<th></th>
<th>Fiscal Years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2011</td>
</tr>
<tr>
<td><strong>Defined benefit plans:</strong></td>
<td></td>
</tr>
<tr>
<td>Discount rates</td>
<td>3.45%</td>
</tr>
<tr>
<td>Rates of compensation increase</td>
<td>2.44%</td>
</tr>
<tr>
<td>Expected long-term return on assets</td>
<td>4.13%</td>
</tr>
<tr>
<td><strong>Post-retirement benefit plan:</strong></td>
<td></td>
</tr>
<tr>
<td>Discount rate</td>
<td>4.40%</td>
</tr>
</tbody>
</table>

The assumptions used to measure the benefit obligations for the Company’s defined benefit pension and post-retirement benefit plans were as follows:

<table>
<thead>
<tr>
<th></th>
<th>September 30,</th>
<th>October 1,</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Defined benefit plans:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Discount rates</td>
<td>3.38%</td>
<td>3.45%</td>
</tr>
<tr>
<td>Rates of compensation increase</td>
<td>2.48%</td>
<td>2.44%</td>
</tr>
<tr>
<td><strong>Post-retirement benefit plan:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Discount rate</td>
<td>3.90%</td>
<td>4.40%</td>
</tr>
</tbody>
</table>

The benefit obligations of defined benefit pension plans and post-retirement benefit plans were measured as of September 30, 2011. For defined benefit pension plans, the discount rate was adjusted as of September 30, 2011 to the range of 1.60% to 5.40% primarily based on the yields of a universe of high quality corporate bonds in each applicable country or the spot rates on high quality AA-rated corporate bonds, with durations corresponding to the expected duration of the benefit obligations. Additionally, the rate of projected compensation increase was adjusted as of September 30, 2011 to the range of 1.75% to 3.90% reflecting expected inflation levels and future outlook. For post-retirement benefit plans, the discount rate as of September 30, 2011 decreased to 3.90%. This discount rate was determined based on the yields of high quality zero-coupon corporate bonds with maturities that match the expected durations of the benefit obligations.

As of September 30, 2011, the Company reviewed the expected long-term rate of return on defined benefit pension plan assets. This review consisted of forward-looking projections for a risk-free rate of return, inflation rate and implied equity risk premiums for particular asset classes. Historical returns were not used. The results of this review were applied to the target asset allocation in accordance with...
the Company’s planned investment strategies, which are implemented by outside investment managers. The expected long-term rate of return on plan assets was determined based on the weighted average of projected returns on each asset class.

The assumed healthcare cost trend rates for the post-retirement benefit plan are as follows:

<table>
<thead>
<tr>
<th>Assumed Healthcare Cost Trend Rates</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Post-retirement benefit plan:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current medical cost trend rate</td>
<td>11.2%</td>
<td>10.5%</td>
<td>10.5%</td>
</tr>
<tr>
<td>Ultimate medical cost trend rate</td>
<td>4.5%</td>
<td>4.5%</td>
<td>4.5%</td>
</tr>
</tbody>
</table>

Current medical cost trend rates represent expected increases in healthcare costs in the short term and are based on assessments and surveys from health plan providers. While the current medical cost trend rate is based on market conditions, the ultimate trend rate reflects a long-term view of expected increases in healthcare costs in the U.S., which is assumed to be consistent with the long-term expected nominal gross domestic product growth rates. Assumed healthcare cost trend rates could have an effect on the amounts reported for healthcare plans. A 1.0 percentage point increase in the assumed healthcare cost trend rates would have increased the total service cost and interest cost components reported in fiscal year 2011 by $19,000 and would have increased the post-retirement benefit obligation reported in fiscal year 2011 by $415,000. A 1.0 percentage point decrease in the assumed healthcare cost trend rates would have decreased the total service cost and interest cost components reported in fiscal year 2011 by $17,000 and would have decreased the post-retirement benefit obligation in fiscal year 2011 by $374,000.

**Plan Assets**

The Company contributes to post-retirement benefit plans on a cash basis as benefits are paid. No assets have been segregated and restricted to provide post-retirement benefits.

For the defined benefit pension plans, the investment objectives of the Company are to generate returns that will enable the defined benefit pension plans to meet their future obligations. The precise amount of these obligations depends on future events, including the life expectancy of the pension plans’ members and the level of salary increases. The obligations are estimated using actuarial assumptions, based on the current economic environment. The investment strategy depends on the country in which the defined benefit pension plan applies. The investment objectives of some defined benefit pension plans are more conservative than others. In general, the investment strategy of the defined benefit pension plans is to balance the requirement to generate return using higher-returning assets such as equity securities, with the need to control risk with less volatile assets, such as fixed-income securities. Risks include, among others, the likelihood of the defined benefit pension plans becoming underfunded, thereby increasing their dependence on contributions from the Company. Within each asset class, investment managers give consideration to balancing the portfolio among industry sectors, geographies, interest rate sensitivity, dependence on economic growth, currency and other factors that affect investment returns. The target allocation as of the end of fiscal year 2011 was 32% equities, 62% debt and fixed income assets and 6% other.
The following table presents the Company’s defined benefit pension plans’ major asset categories, their associated fair values, as well as the actual allocation of equity, debt and fixed income, real estate and all other types of investments:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Quoted Prices in Active Markets for Identical Assets</th>
<th>Significant Observable Inputs (Level 2)</th>
<th>Significant Unobservable Inputs (Level 3)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>As of September 30, 2011:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Debt securities:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corporate debt securities</td>
<td>$0.1</td>
<td>$ —</td>
<td>$ —</td>
<td>$ 0.1</td>
</tr>
<tr>
<td>Investment funds:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mutual funds—equities</td>
<td>—</td>
<td>32.4</td>
<td>—</td>
<td>32.4</td>
</tr>
<tr>
<td>Mutual funds—debt</td>
<td>—</td>
<td>20.6</td>
<td>—</td>
<td>20.6</td>
</tr>
<tr>
<td>Mutual funds—real estate</td>
<td>—</td>
<td>3.2</td>
<td>—</td>
<td>3.2</td>
</tr>
<tr>
<td>Assets held by insurance company:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insurance contracts</td>
<td>—</td>
<td>67.9</td>
<td>—</td>
<td>67.9</td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>1.3</td>
<td>—</td>
<td>—</td>
<td>1.3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$1.4</td>
<td>$124.1</td>
<td>$ —</td>
<td>$125.5</td>
</tr>
<tr>
<td><strong>As of October 1, 2010:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Debt securities:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corporate debt securities</td>
<td>$0.1</td>
<td>$ —</td>
<td>$ —</td>
<td>$ 0.1</td>
</tr>
<tr>
<td>Investment funds:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mutual funds—equities</td>
<td>—</td>
<td>33.0</td>
<td>—</td>
<td>33.0</td>
</tr>
<tr>
<td>Mutual funds—debt</td>
<td>—</td>
<td>20.7</td>
<td>—</td>
<td>20.7</td>
</tr>
<tr>
<td>Mutual funds—real estate</td>
<td>—</td>
<td>2.9</td>
<td>—</td>
<td>2.9</td>
</tr>
<tr>
<td>Assets held by insurance company:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insurance contracts</td>
<td>—</td>
<td>55.0</td>
<td>—</td>
<td>55.0</td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>1.4</td>
<td>—</td>
<td>—</td>
<td>1.4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$1.5</td>
<td>$111.6</td>
<td>$ —</td>
<td>$113.1</td>
</tr>
</tbody>
</table>

**Valuation Techniques**

Debt securities are valued at the closing price reported on the stock exchange on which the individual securities are traded. Mutual funds are typically valued using the net asset value (“NAV”) provided by the administrator of the fund. Insurance contracts are valued by the insurer using the cash surrender value, which is the amount a plan would receive if a contract was terminated. Cash includes deposits and money market accounts, which are valued at their cost plus interest on a daily basis, which approximates fair value. There were no changes in valuation techniques during fiscal years 2011 and 2010.

**Medicare Prescription Drug Act**

The Medicare Prescription Drug, Improvement and Modernization Act (the “Prescription Drug Act”) provides a prescription drug benefit under Medicare (Medicare Part D), as well as a federal subsidy to sponsors of retiree healthcare benefit plans that provide a benefit that is at least actuarially equivalent to Medicare Part D. Since it sponsors post-retirement benefit plans that provide prescription drug benefits, the Company enrolled all Medicare eligible retirees in fiscal years 2011, 2010 and 2009 in either Medicare Advantage plans or in health plans where prescription drug benefits are supplied via fully insured Prescription Drug Plans.
Estimated Contributions and Future Benefit Payments

The Company made contributions of $7.4 million to the defined benefit pension plans during fiscal year 2011, compared to $5.5 million in fiscal year 2010. The Company made contributions of $0.5 million to the post-retirement benefit plan for fiscal year 2011. The Company expects total contribution to the defined benefit pension plans and the post-retirement benefit plan for fiscal year 2012 will be approximately $9.5 million and approximately $0.5 million, respectively.

Estimated future benefit payments at September 30, 2011 were as follows:

<table>
<thead>
<tr>
<th>Fiscal Years:</th>
<th>Defined Benefit Plans</th>
<th>Post-Retirement Benefit Plan</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>$3.3</td>
<td>$0.5</td>
<td>$3.8</td>
</tr>
<tr>
<td>2013</td>
<td>3.5</td>
<td>0.5</td>
<td>4.0</td>
</tr>
<tr>
<td>2014</td>
<td>4.4</td>
<td>0.5</td>
<td>4.9</td>
</tr>
<tr>
<td>2015</td>
<td>4.0</td>
<td>0.6</td>
<td>4.6</td>
</tr>
<tr>
<td>2016</td>
<td>4.4</td>
<td>0.5</td>
<td>4.9</td>
</tr>
<tr>
<td>2017-2021</td>
<td>26.9</td>
<td>2.4</td>
<td>29.3</td>
</tr>
<tr>
<td></td>
<td>$46.5</td>
<td>$5.0</td>
<td>$51.5</td>
</tr>
</tbody>
</table>

Because amounts related to retirement plans of Research Instruments were not material for any period presented, the Company has not segregated them from continuing operations in this note. See Note 18, “Discontinued Operations” for a detailed discussion.

12. STOCKHOLDERS’ EQUITY

Stock Repurchase Program

During fiscal year 2011, 2010 and 2009, the Company repurchased 9,028,033 shares, 9,788,249 shares and 2,248,000 shares, respectively, of VMS common stock under various authorizations by VMS’s Board of Directors. The repurchased shares include shares of VMS common stock repurchased under various accelerated share repurchase agreements. Aggregate cash payments in connection with the various accelerated share repurchase agreements (as further discussed below) and for shares repurchased in the open market totaled $611 million, $520 million and $101 million in fiscal years 2011, 2010 and 2009, respectively. All shares that were repurchased have been retired.

On August 24, 2010, the Company executed an accelerated share repurchase agreement with BofA (the “August 2010 Repurchase Agreement”). Pursuant to the August 2010 Repurchase Agreement, the Company initially paid to BofA $225 million and BofA delivered 3,888,249 shares of VMS common stock, representing approximately 90% of the shares expected to be repurchased. Under the terms of the August 2010 Repurchase Agreement, the specific number of shares that the Company ultimately repurchased was to be based on the volume weighted average share price of VMS common stock during the repurchase period, less a discount, such that the Company might be entitled to receive additional shares of VMS common stock from BofA or the Company might be required to deliver VMS shares or, at its option, make a cash payment to BofA. The repurchase period ended on February 23, 2011 and the Company made a cash payment of $26.1 million to settle this contract without receiving or delivering additional VMS shares in March 2011. This cash payment upon settlement, together with $22.5 million, representing approximately 10% of the initial cash payment to BofA, was recorded as an equity forward contract, which was included in “Capital in excess of par value” in the Consolidated Balance Sheet as of September 30, 2011.
On February 23, 2011, the Company entered into a substantially identical accelerated share repurchase agreement with BofA (the “February 2011 Repurchase Agreement”). Pursuant to the February 2011 Repurchase Agreement, the Company paid to BofA $280 million and BofA delivered 3,547,474 shares of VMS common stock, representing approximately 85% of the shares expected to be repurchased. The remaining $42 million, representing approximately 15% of the cash payment to BofA, was recorded as an equity forward contract, which was included in “Capital in excess of par value” in the Consolidated Balance Sheet as of September 30, 2011. Under the terms of the February 2011 Repurchase Agreement, the specific number of shares that the Company ultimately repurchased was to be based on the volume weighted average share price of VMS common stock during the repurchase period, less a discount. In June 2011, BofA accelerated the end of the repurchase period and the Company received an additional 630,921 shares of VMS common stock upon the settlement of the February 2011 Repurchase Agreement. The market value of the shares received of $41.3 million was included in “Capital in excess of par value” in the Consolidated Balance Sheet as of September 30, 2011.

On August 25, 2011, the Company entered into another accelerated share repurchase agreement with BofA (the “August 2011 Repurchase Agreement”). Pursuant to the August 2011 Repurchase Agreement, the Company paid to BofA $250 million and BofA delivered 3,849,638 shares of VMS common stock, representing approximately 85% of the shares expected to be repurchased. Under the terms of the August 2011 Repurchase Agreement, the specific number of shares that the Company ultimately will repurchase is based on the volume weighted average share price of VMS common stock during the repurchase period, less a discount. The repurchase period will end on February 21, 2012, however beginning on November 23, 2011 BofA has the right to accelerate the end of the repurchase period. The August 2011 Repurchase Agreement provides that at the completion of the repurchase period, depending on the volume weighted average share price of VMS common stock during the repurchase period, the Company may be entitled to receive additional shares of VMS common stock from BofA or the Company may be required to deliver VMS shares or, at its option, make a cash payment to BofA. The remaining $37.5 million, representing approximately 15% of the cash payment to BofA, was recorded as an equity forward contract, which was included in “Capital in excess of par value” in the Consolidated Balance Sheet at September 30, 2011.

In February 2011, the VMS Board of Directors authorized the repurchase of 12 million shares of VMS common stock through the end of fiscal year 2012. As of September 30, 2011, 7,433,718 shares of VMS common stock remained available for repurchase under this repurchase authorization. Shares may be repurchased in the open market, in privately negotiated transactions (such as the February 2011 and August 2011 and similar accelerated repurchase programs) or under Rule 10b5-1 share repurchase plans, and may be made from time to time or in one or more blocks.
### 13. EMPLOYEE STOCK PLANS

**Employee Stock Plans**

During fiscal year 1991, VMS adopted the stockholder-approved Omnibus Stock Plan (the “Omnibus Plan”) under which shares of common stock could be issued to officers, directors, key employees and consultants. The Omnibus Plan was amended and restated as of the Spin-offs. The maximum number of shares that could have been issued was limited to 20,000,000 shares. Stock options granted under the Omnibus Plan have an exercise price equal to the closing market price of the underlying stock on the grant date (unless the stock market was closed on the grant date, in which case the exercise price was equal to the average of the highest and lowest quoted selling prices on the stock market on the day before and the day after the grant date) and expire no later than ten years from the grant date. Options granted under the Omnibus Plan before November 2000 were generally exercisable in cumulative installments of one third each year, commencing one year following the date of grant. Options granted after November 2000 were exercisable in the following manner: the first one-third one year from the date of grant, with the remainder vesting monthly during the following two-year period. No further awards may be made under the Omnibus Plan.

In November 2000, VMS adopted the 2000 Stock Option Plan (the “2000 Plan”), which was intended to supplement the Omnibus Plan. The maximum number of shares that could have been issued was limited to 12,000,000 shares. The 2000 Plan is similar to the Omnibus Plan in all material respects, with the exception that shares available for awards under the 2000 Plan could not be issued to directors or officers of VMS. Stock options granted under the 2000 Plan are exercisable for the first one-third of the option shares one year from the date of grant, with the remainder vesting monthly during the following two-year period. Other terms of the 2000 Plan mirror the Omnibus Plan. No further awards may be made under the 2000 Plan.

In February 2005, VMS’s stockholders approved the 2005 Omnibus Stock Plan (the “2005 Plan”), which was amended and restated in February 2006 and February 2007 and further amended in 2008, 2009 and

<table>
<thead>
<tr>
<th>Table of Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td>VARIAN MEDICAL SYSTEMS, INC. AND SUBSIDIARIES</td>
</tr>
<tr>
<td>NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)</td>
</tr>
</tbody>
</table>

### Accumulated Other Comprehensive Loss

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Defined Benefit Pension and Post-retirement Benefit Plans</th>
<th>Unrealized Gain (Loss) on Derivatives</th>
<th>Cumulative Translation Adjustments</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Balance at September 26, 2008</strong></td>
<td>$ (20,385)</td>
<td>$ (487)</td>
<td>$ 2,644</td>
<td>$(18,228)</td>
</tr>
<tr>
<td>Current period other comprehensive income (loss)</td>
<td>(10,297)</td>
<td>487</td>
<td>1,584</td>
<td>8,226</td>
</tr>
<tr>
<td>Adoption of measurement date provision of ASC 715</td>
<td>69</td>
<td>—</td>
<td>—</td>
<td>69</td>
</tr>
<tr>
<td><strong>Balance at October 2, 2009</strong></td>
<td>(30,613)</td>
<td>—</td>
<td>4,228</td>
<td>(26,385)</td>
</tr>
<tr>
<td>Current period other comprehensive income (loss)</td>
<td>(6,231)</td>
<td>(307)</td>
<td>(4,681)</td>
<td>(11,219)</td>
</tr>
<tr>
<td><strong>Balance at October 1, 2010</strong></td>
<td>(36,844)</td>
<td>(307)</td>
<td>(453)</td>
<td>(37,604)</td>
</tr>
<tr>
<td>Current period other comprehensive income (loss)</td>
<td>(6,276)</td>
<td>300</td>
<td>(3,268)</td>
<td>(9,244)</td>
</tr>
<tr>
<td><strong>Balance at September 30, 2011</strong></td>
<td>$ (43,120)</td>
<td>$ (7)</td>
<td>$ (3,721)</td>
<td>$ (46,848)</td>
</tr>
</tbody>
</table>
2010. The 2005 Plan, as amended and restated to date, is referred to as the “Second Amended 2005 Plan.” The Second Amended 2005 Plan provides for the grant of equity incentive awards, including stock options, restricted stock, stock appreciation rights, performance units, restricted stock units and performance shares to officers, directors, key employees and consultants. The Second Amended 2005 Plan also provides for the grant of deferred stock units to non-employee directors. The maximum number of shares issuable under the Second Amended 2005 Plan is (a) 18,950,000, plus (b) the number of shares authorized for issuance, but never issued, under the Omnibus Plan and the 2000 Plan, plus (c) the number of shares subject to awards previously granted under the Omnibus Plan and 2000 Plan that terminate, expire, or lapse, plus (d) amounts granted in substitution of options in connection with certain transactions.

For purposes of the total number of shares available for grant under the Second Amended 2005 Plan, any shares subject to awards of stock options or stock appreciation rights are counted against the available-for-grant limit as one share for every one share subject to the award. Awards other than stock options and stock appreciation rights are counted against the available-for-grant limit as three shares for every one share awarded before February 16, 2007 and as 2.5 shares for every one share awarded on or after February 16, 2007. All awards may be subject to restrictions on transferability and continued employment as determined by the Compensation and Management Development Committee.

Stock options granted under the Second Amended 2005 Plan generally have an exercise price equal to the closing market price of a share of VMS common stock on the grant date. Except for directors, stock options granted under the Second Amended 2005 Plan generally are exercisable in the following manner: the first one-third one year from the date of grant, with the remainder vesting monthly during the following two-year period. Stock option grants to directors are immediately exercisable. For grants of non-qualified stock options made on or after November 17, 2005 under the Second Amended 2005 Plan to employees who retire from the Company within one year of the grant date, the number of shares subject to the stock option shall be adjusted proportionally by the time during such one-year period that the employee remained an employee of the Company (based upon a 365 day year). The revised number of shares subject to the stock option would continue to vest in accordance with the original vesting schedule, and the remaining shares would be cancelled as of the date of retirement. Under the Second Amended 2005 Plan, stock options granted on or prior to February 16, 2007 generally have a term of ten years and stock options granted after February 16, 2007 generally have a term of seven years. The Second Amended 2005 Plan prohibits the repricing of stock options and stock appreciation rights without the approval of VMS’s stockholders.

Restricted stock awards and restricted stock unit awards generally vest over a period of one to five years from the date of grant. For awards of restricted stock and restricted stock units after February 16, 2007, any unvested awards are generally forfeited at the time of termination. However, unvested restricted stock units granted in fiscal year 2010 and thereafter are fully vested upon death and will continue to vest in accordance with the original vesting schedule if an employee retires one year or more from grant date. If an employee retires within one year of the grant date, the number of restricted stock units shall be adjusted proportionally by the time during such one year period that the employee remained an employee of the Company (based upon a 365 day year). The revised number of restricted stock units would vest in accordance with the original vesting schedule and the remaining restricted stock units would be cancelled as of the date of retirement.

Deferred stock unit awards to non-employee directors vest over a period of not less than one year from the date of grant, unless otherwise provided in the grant agreement as determined by VMS’s Board of Directors, and vesting may be pro rata during the vesting period. Each deferred stock unit is deemed to

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be the equivalent of one share of VMS common stock. Payment of deferred stock units generally will be made in shares of VMS common stock upon the earlier of the third anniversary of the grant date or the director’s termination.

The fair value of options granted and the option component of the shares purchased under the Employee Stock Purchase Plan (which is described further below) shares were estimated at the date of grant using the Black-Scholes model with the following weighted average assumptions:

<table>
<thead>
<tr>
<th>Employee Stock Plans</th>
<th>Employee Stock Purchase Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fiscal Years</td>
</tr>
<tr>
<td></td>
<td>2011</td>
</tr>
<tr>
<td>Expected term (in years)</td>
<td>4.75</td>
</tr>
<tr>
<td>Risk-free interest rate</td>
<td>2.0%</td>
</tr>
<tr>
<td>Expected volatility</td>
<td>35.5%</td>
</tr>
<tr>
<td>Expected dividend yield</td>
<td>—</td>
</tr>
<tr>
<td>Weighted average fair value at grant date</td>
<td>$23.26</td>
</tr>
</tbody>
</table>

(1) No purchases were made under an employee stock purchase plan in fiscal year 2010.

The expected term of stock options represents the weighted average period the stock options are expected to remain outstanding. The expected term is based on the observed and expected time to post-vesting exercise and post-vesting cancellations of stock options by Company employees. The Company determined the expected term of stock options based on the demographic grouping of employees and retirement eligibility. The Company used a combination of historical and implied volatility, or blended volatility, in deriving the expected volatility assumption. Blended volatility represents the weighted average of implied volatility and historical volatility. Implied volatility was derived based on traded options on VMS common stock. Implied volatility is weighted in the calculation of blended volatility based on the ratio of the term of the exchange-traded options to the expected terms of the employee stock options. Historical volatility represents the remainder of the weighting. The decision to incorporate implied volatility was based on the Company’s assessment that implied volatility of publicly traded options on VMS common stock is reflective of market conditions and is generally reflective of both historical volatility and expectations of how future volatility will differ from historical volatility. In determining the extent of use of implied volatility, the Company considered: (i) the volume of market activity of traded options; (ii) the ability to reasonably match the input variables of traded options to those of stock options granted by the Company, including the date of grant; (iii) the similarity of the exercise prices; and (iv) the length of term of traded options. After considering the above factors, the Company determined that it cannot rely exclusively on implied volatility based on the fact that the term of VMS exchange-traded options is less than one year and that it is different from the expected terms of the stock options granted by the Company. Therefore, the Company believes a combination of the historical volatility over the expected terms of the stock options granted by the Company and the implied volatility of exchange-traded options best reflects the expected volatility of VMS common stock. The risk-free interest rate assumption is based upon observed interest rates appropriate for the term of VMS’s stock options. The dividend yield assumption is based on the Company’s history and expectation of no dividend payouts.

As share-based compensation expense recognized in the Consolidated Statements of Earnings is based on awards ultimately expected to vest, it has been reduced for estimated forfeitures. Forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ.
from those estimates. Forfeitures are estimated based on historical experience. In fiscal years 2011, 2010 and 2009, the Company adjusted share-based compensation expense based on its actual forfeitures.

The table below summarizes the effect of recording share-based compensation expense:

<table>
<thead>
<tr>
<th>Fiscal Years</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of revenues—Product</td>
<td>$3,917</td>
<td>$3,680</td>
<td>$4,285</td>
</tr>
<tr>
<td>Cost of revenues—Service contracts and other</td>
<td>1,977</td>
<td>2,475</td>
<td>4,068</td>
</tr>
<tr>
<td>Research and development</td>
<td>5,467</td>
<td>4,931</td>
<td>5,239</td>
</tr>
<tr>
<td>Selling, general and administrative</td>
<td>30,657</td>
<td>28,727</td>
<td>28,985</td>
</tr>
<tr>
<td>Taxes on earnings</td>
<td>(14,063)</td>
<td>(14,373)</td>
<td>(13,796)</td>
</tr>
</tbody>
</table>

Net decrease in net earnings $27,955 $25,440 $28,781

Increase (decrease) on:

Cash flows from operating activities $(22,570) $(15,072) $(9,639)
Cash flows from financing activities $22,570 $15,072 $9,639

During fiscal years 2011, 2010 and 2009, total share-based compensation expense recognized in earnings before taxes was $42.0 million, $39.8 million and $42.6 million, respectively, and the total related recognized tax benefit was $14.1 million, $14.4 million and $13.8 million, respectively. Total share-based compensation expense capitalized as part of inventory as of September 30, 2011, October 1, 2010 and October 2, 2009 was $2.9 million, $0.4 million and $1.5 million, respectively.

Activity under the Company’s employee stock plans is presented below:

<table>
<thead>
<tr>
<th>Shares Available for Grant</th>
<th>Number of Shares</th>
<th>Weighted Average Exercise Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at September 26, 2008 (9,734 options exercisable at a weighted average exercise price of $35.91)</td>
<td>3,523</td>
<td>11,957</td>
</tr>
<tr>
<td>Authorized</td>
<td>4,200</td>
<td>—</td>
</tr>
<tr>
<td>Granted(1)</td>
<td>(2,575)</td>
<td>1,070</td>
</tr>
<tr>
<td>Canceled, expired or forfeited(2)</td>
<td>204</td>
<td>(146)</td>
</tr>
<tr>
<td>Exercised</td>
<td>—</td>
<td>(1,028)</td>
</tr>
<tr>
<td>Balance at October 2, 2009 (10,140 options exercisable at a weighted average exercise price of $40.18)</td>
<td>5,352</td>
<td>11,853</td>
</tr>
<tr>
<td>Authorized</td>
<td>5,500</td>
<td>—</td>
</tr>
<tr>
<td>Granted(1)</td>
<td>(2,661)</td>
<td>1,113</td>
</tr>
<tr>
<td>Canceled, expired or forfeited(2)</td>
<td>216</td>
<td>(141)</td>
</tr>
<tr>
<td>Exercised</td>
<td>—</td>
<td>(2,651)</td>
</tr>
<tr>
<td>Balance at October 1, 2010 (8,449 options exercisable at a weighted average exercise price of $43.16)</td>
<td>8,407</td>
<td>10,174</td>
</tr>
<tr>
<td>Granted(1)</td>
<td>(108)</td>
<td>48</td>
</tr>
<tr>
<td>Canceled, expired or forfeited(2)</td>
<td>125</td>
<td>(46)</td>
</tr>
<tr>
<td>Exercised</td>
<td>—</td>
<td>(3,259)</td>
</tr>
<tr>
<td>Balance at September 30, 2011</td>
<td>8,424</td>
<td>6,917</td>
</tr>
</tbody>
</table>
For fiscal year 2011, the total pre-tax intrinsic value of options exercised was $87 million. The following table summarizes information related to options outstanding and exercisable under the Company’s employee stock plans at September 30, 2011:

<table>
<thead>
<tr>
<th>Range of Exercise Prices</th>
<th>Number of Shares</th>
<th>Weighted Average Remaining Contractual Term (in years)</th>
<th>Weighted Average Exercise Price</th>
<th>Aggregate Intrinsic Value (1)</th>
<th>Number of Shares</th>
<th>Weighted Average Remaining Contractual Term (in years)</th>
<th>Weighted Average Exercise Price</th>
<th>Aggregate Intrinsic Value (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$14.73 – $21.27</td>
<td>54</td>
<td>0.1</td>
<td>$17.95</td>
<td>$1,865</td>
<td>54</td>
<td>0.1</td>
<td>$17.95</td>
<td>$1,865</td>
</tr>
<tr>
<td>$21.50 – $29.19</td>
<td>291</td>
<td>1.2</td>
<td>24.43</td>
<td>8,067</td>
<td>291</td>
<td>1.2</td>
<td>24.43</td>
<td>8,067</td>
</tr>
<tr>
<td>$32.10 – $39.85</td>
<td>2,003</td>
<td>3.3</td>
<td>37.06</td>
<td>30,249</td>
<td>1,866</td>
<td>3.2</td>
<td>37.05</td>
<td>28,198</td>
</tr>
<tr>
<td>$40.21 – $52.07</td>
<td>2,673</td>
<td>4.6</td>
<td>50.10</td>
<td>5,504</td>
<td>2,662</td>
<td>4.6</td>
<td>50.13</td>
<td>5,403</td>
</tr>
<tr>
<td>$52.07 – $72.19</td>
<td>1,896</td>
<td>4.6</td>
<td>53.40</td>
<td>—</td>
<td>1,315</td>
<td>4.2</td>
<td>53.53</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>6,917</td>
<td>4.1</td>
<td>$45.90</td>
<td>$45,685</td>
<td>6,188</td>
<td>3.9</td>
<td>$45.42</td>
<td>$43,533</td>
</tr>
</tbody>
</table>

(1) The aggregate intrinsic value represents the total pre-tax intrinsic value, which is computed based on the difference between the exercise price and the closing price of VMS common stock of $52.16 as of September 30, 2011, the last trading date of fiscal year 2011, and which represents that amount that would have been received by the option holders had all option holders exercised their options and sold the shares received upon exercise as of that date.
The activity for restricted stock, restricted stock units and deferred stock units is summarized as follows:

<table>
<thead>
<tr>
<th>(In thousands, except per share amounts)</th>
<th>Shares</th>
<th>Weighted Average Grant-Date Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at September 26, 2008</td>
<td>828</td>
<td>$49.62</td>
</tr>
<tr>
<td>Granted</td>
<td>602</td>
<td>37.15</td>
</tr>
<tr>
<td>Vested</td>
<td>(243)</td>
<td>51.33</td>
</tr>
<tr>
<td>Cancelled or expired</td>
<td>(15)</td>
<td>47.27</td>
</tr>
<tr>
<td>Balance at October 2, 2009</td>
<td>1,172</td>
<td>$42.89</td>
</tr>
<tr>
<td>Granted</td>
<td>619</td>
<td>52.72</td>
</tr>
<tr>
<td>Vested</td>
<td>(438)</td>
<td>44.53</td>
</tr>
<tr>
<td>Cancelled or expired</td>
<td>(20)</td>
<td>43.27</td>
</tr>
<tr>
<td>Balance at October 1, 2010</td>
<td>1,333</td>
<td>$46.91</td>
</tr>
<tr>
<td>Granted</td>
<td>24</td>
<td>68.67</td>
</tr>
<tr>
<td>Vested</td>
<td>(590)</td>
<td>47.27</td>
</tr>
<tr>
<td>Cancelled or expired</td>
<td>(32)</td>
<td>46.59</td>
</tr>
<tr>
<td>Balance at September 30, 2011</td>
<td>735</td>
<td>$47.36</td>
</tr>
</tbody>
</table>

Stock compensation for restricted common stock, restricted stock units and deferred stock units is measured at the stock’s fair value on the date of grant and is amortized over each award’s respective vesting period. For fiscal years 2011, 2010 and 2009, the Company recognized total stock based compensation expense related to restricted stock, and restricted stock units of $25.0 million, $24.8 million and $15.9 million, respectively. In addition, the Company recognized $0.7 million, $0.7 million and $0.7 million of compensation expense related to deferred stock units in fiscal years 2011, 2010 and 2009, respectively.

As of September 30, 2011, unrecognized compensation expense totaling $18.6 million was related to restricted stock, restricted stock units and deferred stock units granted under the Company’s employee stock plans. This unrecognized compensation expense is expected to be recognized over a weighted average period of 1.8 years. The 589,832 shares that vested during the year ended September 30, 2011 represented deferred stock units, restricted stock units and restricted common stock, and the total fair value of these shares upon vesting was $40.7 million. The Company withheld 214,826 shares (fair value of approximately $14.8 million) for employees’ minimum withholding taxes at vesting.

Because amounts related to employee stock plans of Research Instruments, which is classified as a discontinued operation, were not material for any period presented, the Company has not segregated them from continuing operations in this note. See Note 18, “Discontinued Operations” for a detailed discussion.

**Employee Stock Purchase Plan**

VMS had an Employee Stock Purchase Plan (the “Prior ESPP”) under which VMS common stock could be issued to substantially all employees in the United States. In May 2009, as part of a broader set of cost control initiatives, VMS’s Board of Directors authorized the suspension of purchases under the Prior ESPP beginning in October 2009. In February 2010, VMS’s stockholders approved the 2010 Employee Stock Purchase Plan (the “2010 ESPP”). The 2010 ESPP, like the Prior ESPP, provides eligible employees with an opportunity to purchase shares of VMS common stock at 85% of the lower of its fair market value at the start and end of a six-month purchase period. The 2010 ESPP provides for the purchase of up to 7 million shares of VMS common stock (including shares that were available for
purchase under the Prior ESPP as of February 11, 2010, the date the 2010 ESPP became effective). Once the 2010 ESPP became effective, purchases could no longer be made under the Prior ESPP.

VMS issued approximately 114,000 shares for $6.1 million in fiscal year 2011 and 472,000 shares for $12.1 million in fiscal year 2009. No shares were issued in fiscal year 2010. At September 30, 2011, 6.9 million shares were available for issuance under the 2010 ESPP.

14. TAXES ON EARNINGS

The Company accounts for income taxes in accordance with ASC 740. ASC 740 provides for an asset and liability approach under which deferred income taxes are based upon enacted tax laws and rates applicable to the periods in which the taxes become payable.

Taxes on earnings from continuing operations were as follows:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Fiscal Years Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2011</td>
</tr>
<tr>
<td>Current provision:</td>
<td></td>
</tr>
<tr>
<td>Federal</td>
<td>$80.4</td>
</tr>
<tr>
<td>State and local</td>
<td>11.7</td>
</tr>
<tr>
<td>Foreign</td>
<td>52.7</td>
</tr>
<tr>
<td>Total current</td>
<td>144.8</td>
</tr>
<tr>
<td>Deferred provision (benefit):</td>
<td></td>
</tr>
<tr>
<td>Federal</td>
<td>32.9</td>
</tr>
<tr>
<td>State and local</td>
<td>6.0</td>
</tr>
<tr>
<td>Foreign</td>
<td>(3.6)</td>
</tr>
<tr>
<td>Total deferred</td>
<td>35.3</td>
</tr>
<tr>
<td>Taxes on earnings</td>
<td>$180.1</td>
</tr>
</tbody>
</table>

Earnings from continuing operations before taxes are generated from the following geographic areas:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Fiscal Years Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2011</td>
</tr>
<tr>
<td>United States</td>
<td>$299.3</td>
</tr>
<tr>
<td>Foreign</td>
<td>289.4</td>
</tr>
<tr>
<td></td>
<td>$588.7</td>
</tr>
</tbody>
</table>

The effective tax rate differs from the U.S. federal statutory tax rate as a result of the following:

<table>
<thead>
<tr>
<th></th>
<th>Fiscal Years Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2011</td>
</tr>
<tr>
<td>Federal statutory income tax rate</td>
<td>35.0%</td>
</tr>
<tr>
<td>State and local taxes, net of federal tax benefit</td>
<td>2.5</td>
</tr>
<tr>
<td>Non-U.S. income taxed at different rates, net</td>
<td>(3.3)</td>
</tr>
<tr>
<td>Resolution of tax contingencies due to lapses of statutes of limitations</td>
<td>(2.8)</td>
</tr>
<tr>
<td>Other</td>
<td>(0.8)</td>
</tr>
<tr>
<td>Effective tax rate</td>
<td>30.6%</td>
</tr>
</tbody>
</table>
During fiscal years 2011, 2010 and 2009, the Company’s effective tax rate was lower than the U.S. federal statutory rate primarily because the Company’s foreign earnings are taxed at rates that, on average, are lower than the U.S. federal rate. This reduction is partly offset by the fact that the Company’s domestic earnings are also subject to state income taxes. During fiscal years 2011 and 2009, the benefit of the release of liabilities for uncertain tax positions as a result of the expiration of the statutes of limitation in various jurisdictions also contributed to the Company’s effective tax rate being lower than the U.S. federal statutory rate.

Significant components of deferred tax assets and liabilities are as follows:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>September 30,</th>
<th>October 1,</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Deferred Tax Assets:</strong></td>
<td>2011</td>
<td>2010</td>
</tr>
<tr>
<td>Deferred revenues</td>
<td>$36.0</td>
<td>$39.0</td>
</tr>
<tr>
<td>Deferred compensation</td>
<td>30.0</td>
<td>28.4</td>
</tr>
<tr>
<td>Product Warranty</td>
<td>13.2</td>
<td>13.2</td>
</tr>
<tr>
<td>Inventory adjustments</td>
<td>18.9</td>
<td>18.2</td>
</tr>
<tr>
<td>Equity-based compensation</td>
<td>39.0</td>
<td>47.5</td>
</tr>
<tr>
<td>Environmental Reserve</td>
<td>6.9</td>
<td>7.5</td>
</tr>
<tr>
<td>Net operating loss carryforwards</td>
<td>49.0</td>
<td>38.0</td>
</tr>
<tr>
<td>Contingent loss reserve</td>
<td>0.4</td>
<td>1.3</td>
</tr>
<tr>
<td>Other</td>
<td>39.5</td>
<td>45.5</td>
</tr>
<tr>
<td>Valuation allowance</td>
<td>(46.9)</td>
<td>(38.5)</td>
</tr>
<tr>
<td><strong>Total deferred tax assets</strong></td>
<td>232.9</td>
<td>238.6</td>
</tr>
<tr>
<td><strong>Deferred Tax Liabilities:</strong></td>
<td>2011</td>
<td>2010</td>
</tr>
<tr>
<td>Goodwill amortization</td>
<td>(27.7)</td>
<td>(25.2)</td>
</tr>
<tr>
<td>Accelerated depreciation</td>
<td>(27.2)</td>
<td>(19.0)</td>
</tr>
<tr>
<td>Other</td>
<td>(24.0)</td>
<td>(13.7)</td>
</tr>
<tr>
<td><strong>Total deferred tax liabilities</strong></td>
<td>(78.9)</td>
<td>(57.9)</td>
</tr>
<tr>
<td><strong>Net deferred tax assets</strong></td>
<td>$107.1</td>
<td>$142.2</td>
</tr>
</tbody>
</table>

The Company has not provided for U.S. federal income and foreign withholding taxes on $926.5 million of cumulative undistributed earnings of non-U.S. subsidiaries. Such earnings are intended to be reinvested in the non-U.S. subsidiaries for an indefinite period of time. If such earnings were not considered to be reinvested indefinitely, additional deferred taxes of approximately $247.9 million would be provided.
The Company has federal net operating loss carryforwards of approximately $5.8 million expiring between 2012 and 2032. The federal net operating loss carryforwards are subject to an annual limitation of approximately $0.6 million per year. The Company has state net operating loss carryforwards of $2.2 million expiring between 2015 and 2035. The Company has foreign net operating loss carryforwards of $145.7 million with an indefinite life. Of this amount, $38.6 million is unavailable to the Company under local loss utilization rules.

The valuation allowance increased by $8.4 million during fiscal year 2011. Of the ending valuation allowance of $46.9 million, $15.3 million is attributable to ACCEL’s deferred tax assets as of the acquisition date which, if recognized, will be allocated to reduce goodwill.

Income taxes paid were as follows:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal income taxes paid, net</td>
<td>$ 70.0</td>
<td>$ 76.0</td>
<td>$ 83.5</td>
</tr>
<tr>
<td>State income taxes paid, net</td>
<td>11.9</td>
<td>14.9</td>
<td>17.1</td>
</tr>
<tr>
<td>Foreign income taxes paid, net</td>
<td>57.5</td>
<td>46.1</td>
<td>35.0</td>
</tr>
<tr>
<td>Total</td>
<td>$139.4</td>
<td>$137.0</td>
<td>$135.6</td>
</tr>
</tbody>
</table>

The Company accounts for uncertainty in income taxes in accordance with the provisions in ASC 740 related to accounting for uncertainty in income taxes, which contain a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining whether the weight of available evidence indicates that it is more likely than not that, based on the technical merits, the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon settlement.

Changes in the Company’s unrecognized tax benefits were as follows:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrecognized tax benefits balance—beginning of fiscal year</td>
<td>$ 46.4</td>
<td>$ 58.9</td>
<td>$ 78.4</td>
</tr>
<tr>
<td>Additions based on tax positions related to a prior year</td>
<td>1.0</td>
<td>1.4</td>
<td>3.0</td>
</tr>
<tr>
<td>Reductions based on tax positions related to a prior year</td>
<td>(0.4)</td>
<td>(14.4)</td>
<td>(8.6)</td>
</tr>
<tr>
<td>Additions based on tax positions related to the current year</td>
<td>8.6</td>
<td>7.9</td>
<td>9.8</td>
</tr>
<tr>
<td>Reductions based on tax positions related to the current year</td>
<td>—</td>
<td>—</td>
<td>(4.2)</td>
</tr>
<tr>
<td>Settlements</td>
<td>(5.1)</td>
<td>(7.2)</td>
<td>(6.0)</td>
</tr>
<tr>
<td>Reductions resulting from the expiration of the applicable statute of limitations</td>
<td>(13.4)</td>
<td>(0.2)</td>
<td>(13.5)</td>
</tr>
<tr>
<td>Unrecognized tax benefits balance—end of fiscal year</td>
<td>$ 37.1</td>
<td>$ 46.4</td>
<td>$ 58.9</td>
</tr>
</tbody>
</table>

As of September 30, 2011, the total amount of gross unrecognized tax benefits was $37.1 million. Of this amount, $34.6 million would affect the effective tax rate if recognized. The difference would be offset by changes to deferred tax assets and liabilities.

The Company includes interest and penalties related to income taxes within “Taxes on earnings” on the Consolidated Statements of Earnings. As of September 30, 2011, the Company had accrued $7.6 million for the payment of interest and penalties related to unrecognized tax benefits. A net benefit of $2.8
million related to interest and penalties was included in “Taxes on earnings.” As of October 1, 2010, the Company had accrued $10.4 million for the payment of interest and penalties related to unrecognized tax benefits. A net expense of $1.5 million related to interest and penalties was included in “Taxes on earnings.”

The Company files U.S. federal, U.S. state, and foreign tax returns. The Company’s U.S. federal tax returns are generally no longer subject to tax examinations for years prior to 2008. The Company has significant operations in Switzerland. The Company’s Swiss tax returns are generally no longer subject to tax examinations for years prior to 2007. For U.S. states and other foreign tax returns, the Company is generally no longer subject to tax examinations for years prior to 2005.

15. BUSINESS COMBINATIONS

On March 4, 2011, the Company acquired all of the outstanding equity of a company, which was then integrated into the Company’s Oncology Systems business. This acquisition was accounted for as a business combination. The total purchase price of $8.0 million consisted of $7.5 million of cash consideration and $0.5 million of contingent consideration at fair value. Of the purchase price, $3.4 million was preliminarily allocated to goodwill, $5.7 million to amortizable intangible assets, and $(1.1) million to net assumed liabilities. Goodwill represents the excess of the purchase price over the fair value of the net tangible and intangible assets acquired and in this case is not deductible for income tax purposes.

The business combination completed in fiscal year 2011 was not significant and therefore pro forma disclosures have not been presented.

16. VARIABLE INTEREST ENTITY

During fiscal 2011, the Company entered into a number of agreements with the CPTC. CPTC is a variable interest entity that was established to finance and operate the Scripps Proton Therapy Center in San Diego, California. CPTC has raised approximately $60 million in equity and has received a $165.3 million loan facility, in which the Company participates, to finance the construction and start-up operations of this center. Scripps Clinic Medical Group, Inc. (“Scripps”) will be responsible for the clinical operations of the Scripps Proton Therapy Center, which is scheduled to open in 2013.

In April 2010, the Company signed an $88 million agreement to supply a proton therapy system to CPTC. The Company began recognizing revenues under this contract in the fourth quarter of fiscal 2011. In June 2011, the Company signed a ten-year, approximately $60 million agreement with CPTC to service the proton therapy system. No revenues have been recognized under this service agreement. In addition, in September 2011, ORIX Capital Markets, LLC (“ORIX”) and the Company, through its Swiss subsidiary, committed to loan up to $165.3 million to CPTC. ORIX is the loan agent for this facility and, along with CPTC and Scripps, has budgetary approval authority for the Scripps Proton Therapy Center. The Company’s maximum loan commitment under this facility is $115.3 million, reflecting the Company’s pro rata share of 69.75% of the obligation to fund the initial distribution and subsequent advances. As of September 30, 2011, the Company has funded $19.2 million of its $115.3 million commitment, which is reported as a current asset on the Company’s Consolidated Balance Sheets. The Company’s subsidiary is not obligated to fund any additional amounts to CPTC beyond the $115.3 million committed under the loan facility. The Company may sell all or a portion of its participation in this loan facility before the end of the drawdown period in 2014. Upon the sale of all or a portion of this facility, the Company will not be required to make further loan advances for the portion of the facility that is sold.
The loan, which matures in September 2015, bears interest at LIBOR plus 6.25% per annum with a minimum interest rate of 8.25% per annum. The loan can be extended for two additional one-year terms at the election of CPTC during which extensions interest will accrue at LIBOR plus 7.00% per annum with a minimum interest rate of 9.00% per annum. Interest only payments are due monthly in arrears until July 1, 2014, at which time monthly payments based on amortization of the principal balance over a 15-year period at an interest rate of 8.25% become due and payable. If all or a portion of the principal is repaid on or before July 1, 2014, interest that would have been payable had the principal not been repaid early is due and payable. The Company, as one of the lenders, is entitled to certain fees, including a commitment fee of 1.5% of the loan facility commitment amount and an exit fee of 1% of the amount of principal paid, whether as a result of prepayment or maturity. The loan facility is collateralized by all of the assets of the Scripps Proton Therapy Center. In connection with the loan facility, the Company’s subsidiary also shares 4% of the gross revenues of the Scripps Proton Therapy Center for 35 years. The Company’s subsidiary’s right of revenue sharing may be reduced upon the sale of a portion of the Company’s loan.

The Company has determined that CPTC is a variable interest entity and that the Company holds a significant variable interest of CPTC through its subsidiary’s participation in the loan facility and its agreements to supply and service the proton therapy equipment. The Company has concluded that it is not the primary beneficiary of CPTC. The Company has no voting rights, has no approval authority or veto rights for CPTC’s budget, and does not have the power to direct patient recruitment, clinical operations and management of the Scripps Proton Therapy Center, which the Company believes are the matters that most significantly affect CPTC’s economic performance.

As of September 30, 2011, in addition to the $19.2 million loan to CPTC, the Company has recorded $15.2 million in accounts receivable from CPTC. The Company’s exposure to loss as a result of its involvement with CPTC is limited to the carrying amounts of these assets on its Consolidated Balance Sheets.

17. SEGMENT INFORMATION

Description of Segments

The Company’s operations are grouped into two reportable operating segments: Oncology Systems and X-ray Products. These reportable operating segments were determined based on how the Company’s Chief Executive Officer, its Chief Operating Decision Maker (“CODM”), views and evaluates the Company’s operations. The Company’s Ginzton Technology Center (“GTC”), SIP business and VPT (previously known as ACCEL Proton Therapy) are reflected in the “Other” category because these operating segments do not meet the criteria of a reportable operating segment. The CODM allocates resources to and evaluates the financial performance of each operating segment primarily based on operating earnings.

The Oncology Systems business segment designs, manufactures, sells and services hardware and software products for radiation treatment of cancer. Products include linear accelerators, brachytherapy afterloaders, treatment simulation and verification equipment and accessories; as well as information management, treatment planning and image processing software. Oncology Systems’ products enable radiation oncology departments in hospitals and clinics to perform conventional radiotherapy treatments and offer advanced treatments such as fixed field intensity-modulated radiation therapy (“IMRT”), image-guided radiation therapy (“IGRT”), volumetric modulated arc therapy and stereotactic radiotherapy, as well as to treat patients using brachytherapy techniques, which involve temporarily implanting radioactive sources. The Company’s Oncology Systems products are also used by
neurosurgeons to perform stereotactic radiosurgery. Oncology Systems’ customers worldwide include university research and community hospitals, private and governmental institutions, healthcare agencies, physicians’ offices and cancer care clinics.

The X-ray Products business segment designs, manufactures and sells x-ray tubes and flat panel detectors (commonly referred to as flat panel detectors or digital image detectors) for use in a range of applications, including radiographic or fluoroscopic imaging, mammography, special procedures and industrial applications; and x-ray tubes for use in computed tomography (“CT”) scanning. X-ray tubes and flat panel detectors are sold to large imaging OEM customers that incorporate our x-ray tube products and flat panel detectors into their medical diagnostic, dental, veterinary and industrial imaging systems. For replacement purposes, x-ray tubes and flat panel detectors are sold to small OEMs, independent service companies and directly to end-users.

The Company has three other businesses that are reported together under the “Other” category. SIP designs, manufactures, sells and services Linatron® x-ray accelerators, imaging processing software and image detection products (including IntellX™) for security and inspection purposes, such as cargo screening at ports and borders and nondestructive examination in a variety of applications. The Company generally sells SIP products to OEMs who incorporate its products into their inspection systems, which are then sold to customs and other government agencies, as well as to commercial private parties in the casting, power, aerospace, chemical, petro-chemical and automotive industries for nondestructive product examination purposes.

The VPT business develops, designs, manufactures, sells and services products and systems for delivering proton therapy, another form of external beam radiotherapy using proton beams for the treatment of cancer.

In the second quarter of fiscal year 2009, the Company completed the sale of Research Instruments in order to focus that business exclusively on the development of the VPT business. Research Instruments is classified as a discontinued operation for all periods presented and the Company has segregated the operating results of Research Instruments from continuing operations on the Consolidated Statements of Earnings. Segment data does not include amounts for discontinued operations. Research Instruments was previously included in the “Other” category. See Note 18, “Discontinued Operations” for a more detailed discussion.

GTC develops technologies that enhance the Company’s current businesses or may lead to new business areas, including technology to improve radiation therapy and x-ray imaging, as well as other technology for a variety of applications, including security and cargo screening.

Corporate includes shared costs of legal, tax, accounting, human resources, real estate, insurance, information technology, treasury, finance, business development, regulatory and other management costs. Prior to fiscal year 2010, only a portion of the indirect and common costs was allocated to the Company’s businesses through the use of estimates. Beginning in fiscal year 2010, budgeted indirect and common costs included in Corporate are fully allocated to the Company’s businesses through the use of estimates. If the new corporate expense allocation method was applied in the fiscal year 2009, operating earnings (loss) would have been $425 million for Oncology Systems, $70 million for X-ray Products, $(24) million for the “Other” category and $3 million for Corporate.

Accordingly, the following information is provided for purposes of achieving an understanding of operations, but may not be indicative of the financial results of the reported segments were they independent organizations. In addition, comparisons of the Company’s operations to similar operations of other companies may not be meaningful.
## Segment Data

### Revenues (Fiscal Years)

<table>
<thead>
<tr>
<th>Segment</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oncology Systems</td>
<td>$2,022</td>
<td>$1,862</td>
<td>$1,798</td>
</tr>
<tr>
<td>X-ray Products</td>
<td>469</td>
<td>403</td>
<td>331</td>
</tr>
<tr>
<td>Total reportable segments</td>
<td>2,491</td>
<td>2,265</td>
<td>2,129</td>
</tr>
<tr>
<td>Other</td>
<td>106</td>
<td>92</td>
<td>85</td>
</tr>
<tr>
<td>Corporate</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total company</strong></td>
<td>$2,597</td>
<td>$2,357</td>
<td>$2,214</td>
</tr>
</tbody>
</table>

### Operating Earnings (Fiscal Years)

<table>
<thead>
<tr>
<th>Segment</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oncology Systems</td>
<td>$507</td>
<td>$462</td>
<td>$482</td>
</tr>
<tr>
<td>X-ray Products</td>
<td>118</td>
<td>100</td>
<td>82</td>
</tr>
<tr>
<td>Total reportable segments</td>
<td>625</td>
<td>562</td>
<td>564</td>
</tr>
<tr>
<td>Other</td>
<td>(32)</td>
<td>(30)</td>
<td>(19)</td>
</tr>
<tr>
<td>Corporate</td>
<td>(5)</td>
<td>2</td>
<td>(71)</td>
</tr>
<tr>
<td><strong>Total company</strong></td>
<td>$588</td>
<td>$534</td>
<td>$474</td>
</tr>
</tbody>
</table>

### Depreciation & Amortization (Fiscal Years)

<table>
<thead>
<tr>
<th>Segment</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oncology Systems</td>
<td>$19</td>
<td>$19</td>
<td>$18</td>
</tr>
<tr>
<td>X-ray Products</td>
<td>8</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Total reportable segments</td>
<td>27</td>
<td>26</td>
<td>25</td>
</tr>
<tr>
<td>Other</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Corporate</td>
<td>23</td>
<td>19</td>
<td>16</td>
</tr>
<tr>
<td><strong>Total company</strong></td>
<td>$53</td>
<td>$48</td>
<td>$44</td>
</tr>
</tbody>
</table>

### Goodwill (Fiscal Years)

<table>
<thead>
<tr>
<th>Segment</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oncology Systems</td>
<td>$1,093</td>
<td>$1,000</td>
<td>$986</td>
</tr>
<tr>
<td>X-ray Products</td>
<td>268</td>
<td>186</td>
<td>154</td>
</tr>
<tr>
<td>Total reportable segments</td>
<td>1,361</td>
<td>1,186</td>
<td>1,140</td>
</tr>
<tr>
<td>Other</td>
<td>239</td>
<td>215</td>
<td>200</td>
</tr>
<tr>
<td>Corporate</td>
<td>899</td>
<td>923</td>
<td>968</td>
</tr>
<tr>
<td><strong>Total company</strong></td>
<td>$2,499</td>
<td>$2,324</td>
<td>$2,308</td>
</tr>
</tbody>
</table>

The reconciliation of segment operating results information to the Company’s earnings from continuing operations before taxes was as follows:

<table>
<thead>
<tr>
<th>Segment</th>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oncology Systems</td>
<td>$507</td>
<td>$462</td>
<td>$482</td>
</tr>
<tr>
<td>X-ray Products</td>
<td>118</td>
<td>100</td>
<td>82</td>
</tr>
<tr>
<td>Total reportable segments</td>
<td>625</td>
<td>562</td>
<td>564</td>
</tr>
<tr>
<td>Other</td>
<td>(32)</td>
<td>(30)</td>
<td>(19)</td>
</tr>
<tr>
<td>Corporate</td>
<td>(5)</td>
<td>2</td>
<td>(71)</td>
</tr>
<tr>
<td><strong>Total company</strong></td>
<td>$589</td>
<td>$533</td>
<td>$475</td>
</tr>
</tbody>
</table>
18. DISCONTINUED OPERATIONS

In September 2008, the Company approved a plan to sell Research Instruments, which developed, manufactured and serviced highly customized scientific instrument components and systems for fundamental and applied physics research primarily for national research laboratories worldwide. Research Instruments was part of the January 2007 ACCEL acquisition and was previously included in the “Other” category in the Company’s Consolidated Financial Statements. The Company decided to sell Research Instruments in order to focus exclusively on the development of its VPT business. In the second quarter of fiscal year 2009, the Company completed the sale of Research Instruments for total cash proceeds of $0.4 million. In connection with the sale of Research Instruments, the Company entered into a non-binding supply agreement with the buyer to supply certain inventory parts for the VPT business. The supply agreement can be terminated by either party upon six months’ notice after December 31, 2011. The inventory purchases under this supply agreement have not and are not expected to have a significant impact on the cash flows of Research Instruments.

The Company classified the operating results of Research Instruments as a discontinued operation in the Consolidated Statements of Earnings for all periods presented. Because the amounts related to Research Instruments are not material in the Consolidated Balance Sheet, Consolidated Statements of Cash Flows and the Consolidated Statements of Stockholders’ Equity and Comprehensive Earnings for all periods presented, the Company has not segregated them from continuing operations.

In fiscal year 2010, the Company recognized an additional loss of $7.1 million for additional cost to settle one customer contract and estimated costs to complete and settle the other customer contract, both of which were related to Research Instruments. In fiscal year 2011, the Company recognized a loss of $9.7 million for additional costs to settle this remaining customer contract related to Research Instruments. These contracts had been accounted for under the percentage-of-completion method, under which revenues and costs of sales are adjusted to reflect changes in estimated costs to complete the contracts. Including the additional loss recognized for the remaining contract, the total loss from discontinued operations for fiscal year 2011 was $9.7 million, less applicable income tax of zero. Including the additional loss recognized for the two contracts, the total loss from discontinued operations for fiscal year 2010 was $7.1 million, less applicable income tax of zero. Loss from discontinued operations for fiscal years 2009 was $12.5 million, less applicable income tax of zero. In fiscal year 2009, loss from discontinued operations included a loss of $8.1 million on the disposal of Research Instruments. Total
revenues of Research Instruments, reported in discontinued operations, for fiscal years 2011, 2010 and 2009 were zero, $(3.6) million and $9.8 million, respectively. As of September 30, 2011, the Company had no remaining obligation related to Research Instruments.

### 19. QUARTERLY FINANCIAL DATA (UNAUDITED)

#### Fiscal Year 2011

<table>
<thead>
<tr>
<th></th>
<th>First Quarter</th>
<th>Second Quarter</th>
<th>Third Quarter</th>
<th>Fourth Quarter</th>
<th>Total Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total revenues</td>
<td>$579.9</td>
<td>$648.4</td>
<td>$649.4</td>
<td>$719.0</td>
<td>$2,596.7</td>
</tr>
<tr>
<td>Gross margin</td>
<td>$266.8</td>
<td>$289.0</td>
<td>$279.8</td>
<td>$300.3</td>
<td>$1,135.9</td>
</tr>
<tr>
<td>Net earnings from continuing operations</td>
<td>$96.5</td>
<td>$103.1</td>
<td>$98.6</td>
<td>$110.4</td>
<td>$408.6</td>
</tr>
<tr>
<td>Net loss from discontinued operations</td>
<td>$ —</td>
<td>$ —</td>
<td>$ —</td>
<td>$(9.7)</td>
<td>$(9.7)</td>
</tr>
<tr>
<td>Net earnings</td>
<td>$96.5</td>
<td>$103.1</td>
<td>$98.6</td>
<td>$100.7</td>
<td>$398.9</td>
</tr>
</tbody>
</table>

#### Fiscal Year 2010

<table>
<thead>
<tr>
<th></th>
<th>First Quarter</th>
<th>Second Quarter</th>
<th>Third Quarter</th>
<th>Fourth Quarter</th>
<th>Total Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total revenues</td>
<td>$540.9</td>
<td>$585.6</td>
<td>$578.0</td>
<td>$652.1</td>
<td>$2,356.6</td>
</tr>
<tr>
<td>Gross margin</td>
<td>$241.0</td>
<td>$254.0</td>
<td>$254.4</td>
<td>$276.2</td>
<td>$1,025.6</td>
</tr>
<tr>
<td>Net earnings from continuing operations</td>
<td>$78.8</td>
<td>$91.1</td>
<td>$91.9</td>
<td>$105.7</td>
<td>$367.5</td>
</tr>
<tr>
<td>Net loss from discontinued operations</td>
<td>$ —</td>
<td>$ —</td>
<td>$(6.4)</td>
<td>$(0.7)</td>
<td>$(7.1)</td>
</tr>
<tr>
<td>Net earnings</td>
<td>$78.8</td>
<td>$91.1</td>
<td>$85.5</td>
<td>$105.0</td>
<td>$360.4</td>
</tr>
</tbody>
</table>
The operating results of Research Instruments are presented as a discontinued operation for all periods. See Note 18, “Discontinued Operations” for detailed discussion.

The four quarters of net earnings per share may not add to the total fiscal year because of differences in the weighted average numbers of shares outstanding during the quarters and the fiscal year.

20. SUBSEQUENT EVENT

On October 3, 2011, the Company acquired Calypso Medical Technologies, Inc., a privately-held supplier of specialized products and software for real-time tumor tracking and motion management during radiosurgery and radiotherapy, for a cash payment of approximately $10 million plus potential contingent consideration upon achievement of certain milestones. This acquisition will enable the Company to offer real-time, non-ionizing tumor tracking tools for enhancing the precision of cancer treatments.
Management of Varian Medical Systems, Inc. and its subsidiaries (the “Company”) is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934. The Company’s internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States of America. Internal control over financial reporting includes those policies and procedures that: (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles in the United States of America, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company’s assets that could have a material effect on the consolidated financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. In addition, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions and that the degree of compliance with the policies or procedures may deteriorate.

Management assessed the effectiveness of the Company’s internal control over financial reporting as of September 30, 2011. In making this assessment, management used the criteria set forth in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on its assessment and those criteria, management concluded that the Company maintained effective internal control over financial reporting as of September 30, 2011. PricewaterhouseCoopers LLP has issued an attestation report on the Company’s internal control over financial reporting as of September 30, 2011, which appears immediately after this report.
REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
Varian Medical Systems, Inc.:

In our opinion, the consolidated financial statements listed in the index appearing under Item 15(a)(1) present fairly, in all material respects, the financial position of Varian Medical Systems, Inc. and its subsidiaries at September 30, 2011 and October 1, 2010, and the results of their operations and their cash flows for each of the three years in the period ended September 30, 2011 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the index appearing under Item 15(a)(2) presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of September 30, 2011, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company’s management is responsible for these financial statements and financial statement schedule, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Report of Management on Internal Control over Financial Reporting. Our responsibility is to express opinions on these financial statements, on the financial statement schedule, and on the Company’s internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

A company’s internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company’s internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company’s assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ PRICEWATERHOUSE COOPERS LLP
San Jose, California
November 23, 2011
Table of Contents

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure
None.

Item 9A. Controls and Procedures

(a) Evaluation of disclosure controls and procedures. Based on the evaluation of our disclosure controls and procedures (as defined in the Rules 13a-15(e) and 15d-15(e) under the Exchange Act required by Exchange Act) Rules 13a-15(b) or 15d-15(b), our principal executive officer and principal financial officer have concluded that as of the end of the period covered by this report, our disclosure controls and procedures were effective to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and include controls and procedures designed to ensure that information required to be disclosed by us in such reports is accumulated and communicated to our management, including the principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

(b) Report of management on internal control over financial reporting. The information required to be furnished pursuant to this item is set forth under the caption “Report of Management on Internal Control over Financial Reporting” on page 140 of this Annual Report on Form 10-K, and is incorporated here by reference.

(c) Changes in internal control over financial reporting. There were no changes in our internal control over financial reporting that occurred during our fourth fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information
None.
PART III

Item 10. Directors, Executive Officers and Corporate Governance

Directors and Executive Officers

The information required by this item with respect to our executive officers is set forth in Part I of this Annual Report on Form 10-K. The information required by this item with respect to our directors, our Audit Committee and its members, and audit committee financial expert is incorporated by reference from our definitive proxy statement for the 2012 Annual Meeting of Stockholders under the caption “Proposal One—Election of Directors.” The information required by this item with respect to compliance with Section 16(a) of the Exchange Act is incorporated by reference from our definitive proxy statement for the 2012 Annual Meeting of Stockholders under the caption “Stock Ownership—Section 16(a) Beneficial Ownership Reporting Compliance.”

Code of Business Ethics

We have adopted a Code of Business Ethics that applies to all of our executive officers and directors. The Code of Business Ethics is posted on our website. The Internet address for our website is http://www.varian.com, and the Code of Business Ethics may be found as follows:

1. From our main web page, first click “Investors.”
2. Next click on “Corporate Governance” in the left hand navigation bar.
3. Finally, click on “Code of Ethics.”

We intend to satisfy the disclosure requirements under Item 5.05(c) of Form 8-K regarding an amendment to, or waiver from, a provision of the Code of Business Ethics that applies to our principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar functions by posting such information on our website, at the address and location specified above.

Item 11. Executive Compensation

The information required by this item is incorporated by reference from our definitive proxy statement for the 2012 Annual Meeting of Stockholders under the caption “Compensation of the Named Executive Officers and Directors.”


Equity Compensation Plan Information

The following table provides information as of September 30, 2011 with respect to the shares of VMS common stock that may be issued under existing equity compensation plans.

<table>
<thead>
<tr>
<th>Plan Category</th>
<th>A</th>
<th>B</th>
<th>C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of securities to be issued upon exercise of outstanding options, warrants and rights</td>
<td>6,211,971(1)</td>
<td>$ 48.56</td>
<td>15,310,100(2)</td>
</tr>
<tr>
<td>Equity compensation plans approved by security holders</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equity compensation plans not approved by security holders (3)</td>
<td>1,162,696</td>
<td>$ 32.73</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>7,374,667</td>
<td>$ 45.90</td>
<td>15,310,100</td>
</tr>
</tbody>
</table>

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The 2000 Stock Option Plan was intended to supplement the Omnibus Stock Plan. The 2000 Stock Option Plan is similar to the Omnibus Stock Plan in all material respects, with the exception that awards under the 2000 Stock Option Plan could not be made to directors or officers of the Company. For a description of the material features of the Omnibus Stock Plan and the 2000 Stock Option Plan, see Note 13, “Employee Stock Plans” of the Notes to the Consolidated Financial Statements, which description is incorporated by reference.

The information required by this item with respect to the security ownership of certain beneficial owners and the security ownership of directors and executive officers is incorporated by reference from our definitive proxy statement for the 2012 Annual Meeting of Stockholders under the caption “Stock Ownership—Beneficial Ownership of Certain Stockholders, Directors and Executive Officers.”

**Item 13. Certain Relationships and Related Transactions, and Director Independence**

The information required by this item with respect to certain relationships and related transactions is incorporated by reference from our definitive proxy statement for the 2012 Annual Meeting of Stockholders under the caption “Certain Relationships and Related Transactions.” The information required by this item with respect to director and committee member independence is incorporated by reference from our definitive proxy statement for the 2012 Annual Meeting of Stockholders under the caption “Proposal One—Election of Directors.”

**Item 14. Principal Accountant Fees and Services**

The information required by this item is incorporated by reference from our definitive proxy statement for the 2011 Annual Meeting of Stockholders under the caption “Proposal Four—Ratification of the Appointment of Our Independent Registered Public Accounting Firm.”

(1) Consists of stock options, restricted stock units and deferred stock units granted under the Omnibus Stock Plan, the 2005 Omnibus Stock Plan, the Amended and Restated 2005 Omnibus Stock Plan and the Second Amended and Restated 2005 Omnibus Stock Plan, as amended. Effective February 17, 2005, no further grants can be made under the Omnibus Stock Plan.

(2) Includes 6,886,012 shares available for future issuance under the 2010 Employee Stock Purchase Plan.

(3) Consists of awards granted under the 2000 Stock Option Plan. Effective February 17, 2005, no further grants can be made under the 2000 Stock Option Plan.

(4) The weighted average exercise price does not take into account the shares issuable upon vesting of outstanding restricted stock units and deferred stock units, which have no exercise price.

The 2000 Stock Option Plan was intended to supplement the Omnibus Stock Plan. The 2000 Stock Option Plan is similar to the Omnibus Stock Plan in all material respects, with the exception that awards under the 2000 Stock Option Plan could not be made to directors or officers of the Company. For a description of the material features of the Omnibus Stock Plan and the 2000 Stock Option Plan, see Note 13, “Employee Stock Plans” of the Notes to the Consolidated Financial Statements, which description is incorporated by reference.

The information required by this item with respect to the security ownership of certain beneficial owners and the security ownership of directors and executive officers is incorporated by reference from our definitive proxy statement for the 2012 Annual Meeting of Stockholders under the caption “Stock Ownership—Beneficial Ownership of Certain Stockholders, Directors and Executive Officers.”

**Item 13. Certain Relationships and Related Transactions, and Director Independence**

The information required by this item with respect to certain relationships and related transactions is incorporated by reference from our definitive proxy statement for the 2012 Annual Meeting of Stockholders under the caption “Certain Relationships and Related Transactions.” The information required by this item with respect to director and committee member independence is incorporated by reference from our definitive proxy statement for the 2012 Annual Meeting of Stockholders under the caption “Proposal One—Election of Directors.”

**Item 14. Principal Accountant Fees and Services**

The information required by this item is incorporated by reference from our definitive proxy statement for the 2011 Annual Meeting of Stockholders under the caption “Proposal Four—Ratification of the Appointment of Our Independent Registered Public Accounting Firm.”

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PART IV

Item 15. Exhibits and Financial Statement Schedules

(a) The following documents are filed as part of this report:

(1) Consolidated Financial Statements:
   - Consolidated Statements of Earnings
   - Consolidated Balance Sheets
   - Consolidated Statements of Cash Flows
   - Consolidated Statements of Stockholders’ Equity and Comprehensive Earnings
   - Notes to the Consolidated Financial Statements
   - Report of Independent Registered Public Accounting Firm

(2) Consolidated Financial Statement Schedule:

The following financial statement schedule of the Registrant and its subsidiaries for fiscal years 2011, 2010 and 2009 is filed as a part of this report and should be read in conjunction with the Consolidated Financial Statements of the Registrant and its subsidiaries.

Schedule II

Valuation and Qualifying Accounts

All other schedules are omitted because of the absence of conditions under which they are required or because the required information is given in the financial statements or the notes thereto.

(3) Exhibits:

<table>
<thead>
<tr>
<th>Exhibit Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>Registrant’s Amended and Restated Certificate of Incorporation, as amended (incorporated by reference to Exhibit No. 3.1 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended July 2, 2004, File No. 1-7598).</td>
</tr>
<tr>
<td>3.2</td>
<td>Registrant’s By-Laws, as amended, effective November 12, 2010. (incorporated by reference to Exhibit No. 3.2 to the Registrant’s Form 8-K/A Current Report filed as of November 17, 2010, File No. 1-7598).</td>
</tr>
<tr>
<td>4.1</td>
<td>Specimen Common Stock Certificate (incorporated by reference to Exhibit No. 4.1 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 2, 1999, File No. 1-7598).</td>
</tr>
<tr>
<td>10.1†</td>
<td>Registrant’s Amended and Restated Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.1 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended July 2, 2004, File No. 1-7598).</td>
</tr>
<tr>
<td>10.2†</td>
<td>Registrant’s Amended and Restated 2000 Stock Option Plan (incorporated by reference to Exhibit No. 10.2 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended July 2, 2004, File No. 1-7598).</td>
</tr>
<tr>
<td>10.3†</td>
<td>Form of Registrant’s Indemnity Agreement with the directors and executive officers (incorporated by reference to Exhibit No. 10.3 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 2, 1999, File No. 1-7598).</td>
</tr>
</tbody>
</table>
Table of Contents

<table>
<thead>
<tr>
<th>Exhibit Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.4†</td>
<td>Form of Registrant’s Change in Control Agreement for Chief Executive Officer (incorporated by reference to Exhibit No. 10.4 to the Registrant’s Form 10-K Annual Report for the fiscal year ended September 29, 2006, File No. 1-7598).</td>
</tr>
<tr>
<td>10.5†*</td>
<td>Form of Registrant’s Change in Control Agreement for Chief Executive Officer (effective for any person assuming such position on or after October 1, 2011).</td>
</tr>
<tr>
<td>10.6†</td>
<td>Form of Registrant’s Change in Control Agreement for Senior Executives (Chief Financial Officer and General Counsel) (incorporated by reference to Exhibit No. 10.5 to the Registrant’s Form 10-K Annual Report for the fiscal year ended September 29, 2006, File No. 1-7598).</td>
</tr>
<tr>
<td>10.7†*</td>
<td>Form of Registrant’s Change in Control Agreement for Senior Executives (Chief Financial Officer and General Counsel) (effective for any person assuming such position on or after October 1, 2011).</td>
</tr>
<tr>
<td>10.8†</td>
<td>Form of Registrant’s Change in Control Agreement for Senior Executives (other than the Chief Executive Officer, the Chief Financial Officer, and the General Counsel) (incorporated by reference to Exhibit No. 10.6 to the Registrant’s Form 10-K Annual Report for the fiscal year ended September 29, 2006, File No. 1-7598).</td>
</tr>
<tr>
<td>10.9†</td>
<td>Form of Registrant’s Change in Control Agreement for Senior Executives (other than the Chief Executive Officer, the Chief Financial Officer, and the General Counsel) (effective for any person assuming such position on or after October 1, 2011) (incorporated by reference to Exhibit No. 99.1 to the Registrant’s Form 8-K Current Report filed on October 4, 2011, File No. 1-7598).</td>
</tr>
<tr>
<td>10.10†</td>
<td>Form of Registrant’s Change in Control Agreement for Key Employees (incorporated by reference to Exhibit No. 10.7 to the Registrant’s Form 10-K Annual Report for the fiscal year ended September 29, 2006, File No. 1-7598).</td>
</tr>
<tr>
<td>10.11†*</td>
<td>Form of Registrant’s Change in Control Agreement for Key Employees (effective for any person assuming such position on or after October 1, 2011).</td>
</tr>
<tr>
<td>10.12†</td>
<td>Form of Amendment to the Change in Control Agreement for Chief Executive Officer, Senior Executives (Chief Financial Officer and General Counsel), Senior Executives (other than the Chief Executive Officer, the Chief Financial Officer, and the General Counsel) and Key Employees (incorporated by reference to Exhibit No. 10.8 to the Registrant’s Form 10-K Annual Report for the year ended September 26, 2008, File No. 1-7598).</td>
</tr>
<tr>
<td>10.13</td>
<td>Amended and Restated Note Purchase and Private Shelf Agreement, dated as of April 2, 1999, between the Registrant and Prudential Insurance Company of America (certain exhibits and schedules omitted) (incorporated by reference to Exhibit No. 10.7 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 2, 1999, File No. 1-7598).</td>
</tr>
<tr>
<td>Exhibit Number</td>
<td>Description</td>
</tr>
<tr>
<td>---------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>10.17†</td>
<td>Registrant’s Frozen Deferred Compensation Plan (incorporated by reference to Exhibit No. 10.17 to the Registrant’s Form 10-K Annual Report for the fiscal year ended September 29, 2000, File No. 1-7598).</td>
</tr>
<tr>
<td>10.18†</td>
<td>Registrant’s Amended and Restated 2005 Deferred Compensation Plan (incorporated by reference to Exhibit No. 10.2 of the Registrant’s Form 10-Q Quarterly Report for the quarter ended January 2, 2009, File No. 1-7598).</td>
</tr>
<tr>
<td>10.19†</td>
<td>Registrant’s Management Incentive Plan (incorporated by reference to Exhibit No. 10.5 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 3, 2009, File No. 1-7598).</td>
</tr>
<tr>
<td>10.20†</td>
<td>Registrant’s Retirement Plan (incorporated by reference to Exhibit No. 99.1 to the Registrant’s Registration Statement on Form S-8 filed on March 14, 2001, and amended June 20, 2001, Registration No. 333-57012).</td>
</tr>
<tr>
<td>10.21†</td>
<td>Registrant’s 2010 Employee Stock Purchase Plan (incorporated by reference to Exhibit No. 10.1 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 2, 2010, File No. 1-7598).</td>
</tr>
<tr>
<td>10.22†*</td>
<td>Description of Certain Compensatory Arrangements between the Registrant and its Executive Officers and Directors as of November 15, 2011.</td>
</tr>
<tr>
<td>10.23†</td>
<td>Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.1 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended March 30, 2007, File No. 1-7598).</td>
</tr>
<tr>
<td>10.24†</td>
<td>Amendment No. 1 to Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.1 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended June 27, 2008, File No. 1-7598).</td>
</tr>
<tr>
<td>10.25†</td>
<td>Amendment No. 2 to Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.23 to the Registrant’s Form 10-K Annual Report for the year ended September 26, 2008, File No. 1-7598).</td>
</tr>
<tr>
<td>10.26†</td>
<td>Amendment No. 3 to Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.4 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 3, 2009, File No. 1-7598).</td>
</tr>
<tr>
<td>10.27†</td>
<td>Amendment No. 4 to Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.2 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 2, 2010, File No. 1-7598).</td>
</tr>
<tr>
<td>10.28†</td>
<td>Form of Registrant’s Restricted Stock Agreement under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.3 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 3, 2009, File No. 1-7598).</td>
</tr>
<tr>
<td>10.29†</td>
<td>Form of Registrant’s Nonqualified Stock Option Agreement under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.22 to the Registrant’s Form 10-K Annual Report for the year ended September 28, 2007, File No. 1-7598).</td>
</tr>
<tr>
<td>10.30†</td>
<td>Form of Registrant’s Nonqualified Stock Option Agreement for Officers under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.23 to the Registrant’s Form 10-K Annual Report for the year ended September 28, 2007, File No. 1-7598).</td>
</tr>
<tr>
<td>10.31†</td>
<td>Form of Registrant’s Nonqualified Stock Option Agreement for Directors under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Option Plan (incorporated by reference to Exhibit No. 10.24 to the Registrant’s Form 10-K Annual Report for the year ended September 28, 2007, File No. 1-7598).</td>
</tr>
<tr>
<td>Exhibit Number</td>
<td>Description</td>
</tr>
<tr>
<td>----------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>10.32†</td>
<td>Form of Registrant’s Non-Employee Director Non-Qualified Stock Option Agreement (for use outside the United States) under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit 99.1 of the Registrant’s Current Report on Form 8-K filed on February 18, 2009, File No. 1-7598).</td>
</tr>
<tr>
<td>10.33†</td>
<td>Form of Registrant’s Grant Agreement for Deferred Stock Units under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.28 to the Registrant’s Form 10-K Annual Report for the year ended September 26, 2008, File No. 1-7598).</td>
</tr>
<tr>
<td>10.34†</td>
<td>Form of Registrant’s Non-Employee Director Deferred Stock Unit Agreement (for use outside the United States) under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit 99.2 of the Registrant’s Current Report on Form 8-K filed on February 18, 2009, File No. 1-7598).</td>
</tr>
<tr>
<td>10.35†</td>
<td>Form of Registrant’s Restricted Stock Unit Agreement under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan. (incorporated by reference to Exhibit 10.3 of the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 2, 2010, File No. 1-7598).</td>
</tr>
<tr>
<td>10.36++</td>
<td>Amended and Restated Credit Agreement entered into as of November 10, 2008 by and between the Registrant and Bank of America, N.A. (incorporated by reference to Exhibit No. 10.1 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended January 2, 2009, File No. 1-7598).</td>
</tr>
<tr>
<td>10.37</td>
<td>Amendment to Amended and Restated Credit Agreement entered into as of July 14, 2009 by and between the Registrant and Bank of America, N.A. (incorporated by reference to Exhibit No. 10.33 to the Registrant’s Form 10-K Annual Report for the year ended October 2, 2009, File No. 1-7598).</td>
</tr>
<tr>
<td>10.38</td>
<td>Amendment No. 2 to Amended and Restated Credit Agreement entered into as of August 11, 2010, by and between the Registrant and Bank of America, N.A. (incorporated by reference to Exhibit No. 10.40 to the Registrant’s Form 10-K Annual Report for the year ended October 1, 2010, File No. 1-7598).</td>
</tr>
<tr>
<td>10.39</td>
<td>Amendment No. 3 to Amended and Restated Credit Agreement entered into as of August 24, 2010, by and between the Registrant and Bank of America, N.A. (incorporated by reference to Exhibit No. 10.41 to the Registrant’s Form 10-K Annual Report for the year ended October 1, 2010, File No. 1-7598).</td>
</tr>
<tr>
<td>10.41*++</td>
<td>Confirmation dated February 23, 2011 by and between the Registrant and Bank of America, N.A.</td>
</tr>
<tr>
<td>10.42*++</td>
<td>Confirmation dated August 25, 2011 by and between the Registrant and Bank of America, N.A.</td>
</tr>
<tr>
<td>10.43*</td>
<td>Amendment No. 4 to Amended and Restated Credit Agreement entered into as of August 25, 2011, by and between the Registrant and Bank of America, N.A.</td>
</tr>
<tr>
<td>10.45*</td>
<td>Revenue Sharing Agreement between ORIX Proton San Diego, LLC and Varian Medical Systems International AG, dated September 30, 2011.</td>
</tr>
<tr>
<td>21*</td>
<td>List of Subsidiaries as of November 1, 2011.</td>
</tr>
<tr>
<td>23*</td>
<td>Consent of Independent Registered Public Accounting Firm.</td>
</tr>
<tr>
<td>Exhibit Number</td>
<td>Description</td>
</tr>
<tr>
<td>----------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>31.1*</td>
<td>Chief Executive Officer Certification Pursuant to Rule 13a-14(a) of the Securities Exchange Act.</td>
</tr>
<tr>
<td>32.1*</td>
<td>Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</td>
</tr>
<tr>
<td>32.2*</td>
<td>Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</td>
</tr>
<tr>
<td>101.INS**</td>
<td>XBRL Instance Document</td>
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<td>101.SCH**</td>
<td>XBRL Taxonomy Extension Schema Document</td>
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<tr>
<td>101.CAL**</td>
<td>XBRL Taxonomy Extension Calculation Linkbase Document</td>
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<tr>
<td>101.DEF**</td>
<td>XBRL Taxonomy Extension Definition Linkbase Document</td>
</tr>
<tr>
<td>101.LAB**</td>
<td>XBRL Taxonomy Extension Label Linkbase Document</td>
</tr>
<tr>
<td>101.PRE**</td>
<td>XBRL Taxonomy Extension Presentation Linkbase Document</td>
</tr>
</tbody>
</table>

† Management contract or compensatory arrangement.

* Filed herewith.

++ Confidential treatment has been requested as to certain portions of this exhibit pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

** Attached as Exhibit 101 to this Annual Report on Form 10-K are the following formatted in XBRL (eXtensible Business Reporting Language): (i) Consolidated Statements of Earnings for the fiscal years ended September 30, 2011, October 1, 2010 and October 2, 2009; (ii) Consolidated Balance Sheets at September 30, 2011 and October 1, 2010; (iii) Consolidated Statements of Cash Flows for the fiscal years ended September 30, 2011, October 1, 2010 and October 2, 2009; (iv) Consolidated Statements of Stockholders’ Equity and Comprehensive Earnings for the fiscal years ended September 30, 2011, October 1, 2010 and October 2, 2009; and (iv) Notes to Consolidated Financial Statements for fiscal year ended September 30, 2011.
SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

Dated: November 23, 2011

VARIAN MEDICAL SYSTEMS, INC.

By: ____________________________
    Elisha W. Finney
    Senior Vice President, Finance and
    Chief Financial Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities indicated.

<table>
<thead>
<tr>
<th>Signature</th>
<th>Capacity</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>/s/ TIMOTHY E. GUERTIN</td>
<td>President and Chief Executive Officer and Director (Principal Executive Officer)</td>
<td>November 23, 2011</td>
</tr>
<tr>
<td>/s/ ELISHA W. FINNEY</td>
<td>Senior Vice President, Finance and Chief Financial Officer (Principal Financial Officer)</td>
<td>November 23, 2011</td>
</tr>
<tr>
<td>/s/ TAI-YUN CHEN</td>
<td>Corporate Vice President, Finance and Corporate Controller (Principal Accounting Officer)</td>
<td>November 23, 2011</td>
</tr>
<tr>
<td>/s/ RICHARD M. LEVY</td>
<td>Chairman of the Board</td>
<td>November 23, 2011</td>
</tr>
<tr>
<td>/s/ SUSAN L. BOSTROM</td>
<td>Director</td>
<td>November 23, 2011</td>
</tr>
<tr>
<td>/s/ JOHN SEELY BROWN</td>
<td>Director</td>
<td>November 23, 2011</td>
</tr>
<tr>
<td>/s/ R. ANDREW ECKERT</td>
<td>Director</td>
<td>November 23, 2011</td>
</tr>
<tr>
<td>/s/ DAVID J. ILLINGWORTH</td>
<td>Director</td>
<td>November 23, 2011</td>
</tr>
<tr>
<td>/s/ MARK R. LARET</td>
<td>Director</td>
<td>November 23, 2011</td>
</tr>
<tr>
<td>/s/ DAVID W. MARTIN, JR.</td>
<td>Director</td>
<td>November 23, 2011</td>
</tr>
<tr>
<td>/s/ RUEDIGER NAUMANN - ETIENNE</td>
<td>Director</td>
<td>November 23, 2011</td>
</tr>
<tr>
<td>/s/ VENKATRAMAN T HYAGARAJAN</td>
<td>Director</td>
<td>November 23, 2011</td>
</tr>
</tbody>
</table>
### VARIAN MEDICAL SYSTEMS, INC. AND SUBSIDIARIES

#### VALUATION AND QUALIFYING ACCOUNTS

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Description</th>
<th>Balance at Beginning of Period</th>
<th>Charged to Bad Debt Expense</th>
<th>Write-Offs/Adjustments Charged to Allowance</th>
<th>Balance at End of Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>Allowance for doubtful accounts receivable</td>
<td>$4,209</td>
<td>$2,514</td>
<td>$689</td>
<td>$6,034</td>
</tr>
<tr>
<td>2010</td>
<td>Allowance for doubtful accounts receivable</td>
<td>$4,347</td>
<td>$1,319</td>
<td>$1,457</td>
<td>$4,209</td>
</tr>
<tr>
<td>2009</td>
<td>Allowance for doubtful accounts receivable</td>
<td>$3,110</td>
<td>$2,038</td>
<td>$801</td>
<td>$4,347</td>
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</table>

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Description</th>
<th>Balance at Beginning of Period</th>
<th>Increases (In thousands)</th>
<th>Deductions (In thousands)</th>
<th>Balance at End of Period</th>
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<tbody>
<tr>
<td>2011</td>
<td>Valuation allowance for deferred tax assets</td>
<td>$38,456</td>
<td>$8,642</td>
<td>$174</td>
<td>$46,924</td>
</tr>
<tr>
<td>2010</td>
<td>Valuation allowance for deferred tax assets</td>
<td>$35,429</td>
<td>$3,071</td>
<td>$44</td>
<td>$38,456</td>
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<tr>
<td>2009</td>
<td>Valuation allowance for deferred tax assets</td>
<td>$20,757</td>
<td>$15,450</td>
<td>$778</td>
<td>$35,429</td>
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</table>
## EXHIBIT INDEX

<table>
<thead>
<tr>
<th>Exhibit Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>Registrant’s Amended and Restated Certificate of Incorporation, as amended (incorporated by reference to Exhibit No. 3.1 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended July 2, 2004, File No. 1-7598).</td>
</tr>
<tr>
<td>3.2</td>
<td>Registrant’s By-Laws, as amended, effective November 12, 2010. (incorporated by reference to Exhibit No. 3.2 to the Registrant’s Form 8-K/A Current Report filed as of November 17, 2010, File No. 1-7598).</td>
</tr>
<tr>
<td>4.1</td>
<td>Specimen Common Stock Certificate (incorporated by reference to Exhibit No. 4.1 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 2, 1999, File No. 1-7598).</td>
</tr>
<tr>
<td>10.1†</td>
<td>Registrant’s Amended and Restated Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.1 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended July 2, 2004, File No. 1-7598).</td>
</tr>
<tr>
<td>10.2†</td>
<td>Registrant’s Amended and Restated 2000 Stock Option Plan (incorporated by reference to Exhibit No. 10.2 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended July 2, 2004, File No. 1-7598).</td>
</tr>
<tr>
<td>10.3†</td>
<td>Form of Registrant’s Indemnity Agreement with the directors and executive officers (incorporated by reference to Exhibit No. 10.3 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 2, 1999, File No. 1-7598).</td>
</tr>
<tr>
<td>10.4†</td>
<td>Form of Registrant’s Change in Control Agreement for Chief Executive Officer (incorporated by reference to Exhibit No. 10.4 to the Registrant’s Form 10-K Annual Report for the fiscal year ended September 29, 2006, File No. 1-7598).</td>
</tr>
<tr>
<td>10.5†**</td>
<td>Form of Registrant’s Change in Control Agreement for Chief Executive Officer (effective for any person assuming such position on or after October 1, 2011).</td>
</tr>
<tr>
<td>10.6†</td>
<td>Form of Registrant’s Change in Control Agreement for Senior Executives (Chief Financial Officer and General Counsel) (incorporated by reference to Exhibit No. 10.5 to the Registrant’s Form 10-K Annual Report for the fiscal year ended September 29, 2006, File No. 1-7598).</td>
</tr>
<tr>
<td>10.7†**</td>
<td>Form of Registrant’s Change in Control Agreement for Senior Executives (Chief Financial Officer and General Counsel) (effective for any person assuming such position on or after October 1, 2011).</td>
</tr>
<tr>
<td>10.8†</td>
<td>Form of Registrant’s Change in Control Agreement for Senior Executives (other than the Chief Executive Officer, the Chief Financial Officer, and the General Counsel) (incorporated by reference to Exhibit No. 10.6 to the Registrant’s Form 10-K Annual Report for the fiscal year ended September 29, 2006, File No. 1-7598).</td>
</tr>
<tr>
<td>10.9†</td>
<td>Form of Registrant’s Change in Control Agreement for Senior Executives (other than the Chief Executive Officer, the Chief Financial Officer, and the General Counsel) (effective for any person assuming such position on or after October 1, 2011) (incorporated by reference to Exhibit No. 99.1 to the Registrant’s Form 8-K Current Report filed on October 4, 2011, File No. 1-7598).</td>
</tr>
</tbody>
</table>
| 10.10†         | Form of Registrant’s Change in Control Agreement for Key Employees (incorporated by reference to Exhibit No. 10.7 to the Registrant’s Form 10-K Annual Report for the fiscal year ended September 29, 2006, File No. 1-7598).                                                                                                                                                                                                 1
## Table of Contents

<table>
<thead>
<tr>
<th>Exhibit Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.11†*</td>
<td>Form of Registrant’s Change in Control Agreement for Key Employees (effective for any person assuming such position on or after October 1, 2011).</td>
</tr>
<tr>
<td>10.12†</td>
<td>Form of Amendment to the Change in Control Agreement for Chief Executive Officer, Senior Executives (Chief Financial Officer and General Counsel), Senior Executives (other than the Chief Executive Officer, the Chief Financial Officer, and the General Counsel) and Key Employees (incorporated by reference to Exhibit No. 10.8 to the Registrant’s Form 10-K Annual Report for the year ended September 26, 2008, File No. 1-7598).</td>
</tr>
<tr>
<td>10.13</td>
<td>Amended and Restated Note Purchase and Private Shelf Agreement, dated as of April 2, 1999, between the Registrant and Prudential Insurance Company of America (certain exhibits and schedules omitted) (incorporated by reference to Exhibit No. 10.7 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 2, 1999, File No. 1-7598).</td>
</tr>
<tr>
<td>10.17†</td>
<td>Registrant’s Frozen Deferred Compensation Plan (incorporated by reference to Exhibit No. 10.17 to the Registrant’s Form 10-K Annual Report for the fiscal year ended September 29, 2000, File No. 1-7598).</td>
</tr>
<tr>
<td>10.18†</td>
<td>Registrant’s Amended and Restated 2005 Deferred Compensation Plan (incorporated by reference to Exhibit No. 10.2 of the Registrant’s Form 10-Q Quarterly Report for the quarter ended January 2, 2009, File No. 1-7598).</td>
</tr>
<tr>
<td>10.19†</td>
<td>Registrant’s Management Incentive Plan (incorporated by reference to Exhibit No. 10.5 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 3, 2009, File No. 1-7598).</td>
</tr>
<tr>
<td>10.20†</td>
<td>Registrant’s Retirement Plan (incorporated by reference to Exhibit No. 99.1 to the Registrant’s Registration Statement on Form S-8 filed on March 14, 2001, and amended June 20, 2001, Registration No. 333-57012).</td>
</tr>
<tr>
<td>10.21†</td>
<td>Registrant’s 2010 Employee Stock Purchase Plan (incorporated by reference to Exhibit No. 10.1 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 2, 2010, File No. 1-7598).</td>
</tr>
<tr>
<td>10.22†*</td>
<td>Description of Certain Compensatory Arrangements between the Registrant and its Executive Officers and Directors as of November 15, 2011.</td>
</tr>
<tr>
<td>10.23†</td>
<td>Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.1 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended March 30, 2007, File No. 1-7598).</td>
</tr>
<tr>
<td>10.24†</td>
<td>Amendment No. 1 to Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.1 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended June 27, 2008, File No. 1-7598).</td>
</tr>
<tr>
<td>Exhibit Number</td>
<td>Description</td>
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<tr>
<td>----------------</td>
<td>-------------</td>
</tr>
<tr>
<td>10.25†</td>
<td>Amendment No. 2 to Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.23 to the Registrant’s Form 10-K Annual Report for the year ended September 26, 2008, File No. 1-7598).</td>
</tr>
<tr>
<td>10.26†</td>
<td>Amendment No. 3 to Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.4 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 3, 2009, File No. 1-7598).</td>
</tr>
<tr>
<td>10.27†</td>
<td>Amendment No. 4 to Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.2 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 2, 2010, File No. 1-7598).</td>
</tr>
<tr>
<td>10.28†</td>
<td>Form of Registrant’s Restricted Stock Agreement under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.3 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 3, 2009, File No. 1-7598).</td>
</tr>
<tr>
<td>10.29†</td>
<td>Form of Registrant’s Nonqualified Stock Option Agreement under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.22 to the Registrant’s Form 10-K Annual Report for the year ended September 28, 2007, File No. 1-7598).</td>
</tr>
<tr>
<td>10.30†</td>
<td>Form of Registrant’s Nonqualified Stock Option Agreement for Officers under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.23 to the Registrant’s Form 10-K Annual Report for the year ended September 28, 2007, File No. 1-7598).</td>
</tr>
<tr>
<td>10.31†</td>
<td>Form of Registrant’s Nonqualified Stock Option Agreement for Directors under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Option Plan (incorporated by reference to Exhibit No. 10.24 to the Registrant’s Form 10-K Annual Report for the year ended September 28, 2007, File No. 1-7598).</td>
</tr>
<tr>
<td>10.32†</td>
<td>Form of Registrant’s Non-Employee Director NonQualified Stock Option Agreement (for use outside the United States) under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit 99.1 of the Registrant’s Current Report on Form 8-K filed on February 18, 2009, File No. 1-7598).</td>
</tr>
<tr>
<td>10.33†</td>
<td>Form of Registrant’s Grant Agreement for Deferred Stock Units under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.28 to the Registrant’s Form 10-K Annual Report for the year ended September 26, 2008, File No. 1-7598).</td>
</tr>
<tr>
<td>10.34†</td>
<td>Form of Registrant’s Non-Employee Director Deferred Stock Unit Agreement (for use outside the United States) under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit 99.2 of the Registrant’s Current Report on Form 8-K filed on February 18, 2009, File No. 1-7598).</td>
</tr>
<tr>
<td>10.35†</td>
<td>Form of Registrant’s Restricted Stock Unit Agreement under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan. (incorporated by reference to Exhibit 10.3 of the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 2, 2010, File No. 1-7598).</td>
</tr>
<tr>
<td>10.36++</td>
<td>Amended and Restated Credit Agreement entered into as of November 10, 2008 by and between the Registrant and Bank of America, N.A. (incorporated by reference to Exhibit No. 10.1 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended January 2, 2009, File No. 1-7598).</td>
</tr>
<tr>
<td>10.37</td>
<td>Amendment to Amended and Restated Credit Agreement entered into as of July 14, 2009 by and between the Registrant and Bank of America, N.A. (incorporated by reference to Exhibit No. 10.33 to the Registrant’s Form 10-K Annual Report for the year ended October 2, 2009, File No. 1-7598).</td>
</tr>
<tr>
<td>Exhibit Number</td>
<td>Description</td>
</tr>
<tr>
<td>----------------</td>
<td>-------------</td>
</tr>
<tr>
<td>10.38</td>
<td>Amendment No. 2 to Amended and Restated Credit Agreement entered into as of August 11, 2010, by and between the Registrant and Bank of America, N.A. (incorporated by reference to Exhibit No. 10.40 to the Registrant’s Form 10-K Annual Report for the year ended October 1, 2010, File No. 1-7598).</td>
</tr>
<tr>
<td>10.39</td>
<td>Amendment No. 3 to Amended and Restated Credit Agreement entered into as of August 24, 2010, by and between the Registrant and Bank of America, N.A. (incorporated by reference to Exhibit No. 10.41 to the Registrant’s Form 10-K Annual Report for the year ended October 1, 2010, File No. 1-7598).</td>
</tr>
<tr>
<td>10.41*++</td>
<td>Confirmation dated February 23, 2011 by and between the Registrant and Bank of America, N.A.</td>
</tr>
<tr>
<td>10.42*++</td>
<td>Confirmation dated August 25, 2011 by and between the Registrant and Bank of America, N.A.</td>
</tr>
<tr>
<td>10.43*</td>
<td>Amendment No. 4 to Amended and Restated Credit Agreement entered into as of August 25, 2011, by and between the Registrant and Bank of America, N.A.</td>
</tr>
<tr>
<td>10.45*</td>
<td>Revenue Sharing Agreement between ORIX Proton San Diego, LLC and Varian Medical Systems International AG, dated September 30, 2011.</td>
</tr>
<tr>
<td>21*</td>
<td>List of Subsidiaries as of November 1, 2011.</td>
</tr>
<tr>
<td>23*</td>
<td>Consent of Independent Registered Public Accounting Firm.</td>
</tr>
<tr>
<td>31.1*</td>
<td>Chief Executive Officer Certification Pursuant to Rule 13a-14(a) of the Securities Exchange Act.</td>
</tr>
<tr>
<td>32.1*</td>
<td>Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</td>
</tr>
<tr>
<td>32.2*</td>
<td>Certification pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</td>
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<tr>
<td>101.INS**</td>
<td>XBRL Instance Document</td>
</tr>
<tr>
<td>101.SCH**</td>
<td>XBRL Taxonomy Extension Schema Document</td>
</tr>
<tr>
<td>101.CAL**</td>
<td>XBRL Taxonomy Extension Calculation Linkbase Document</td>
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<tr>
<td>101.DEF**</td>
<td>XBRL Taxonomy Extension Definition Linkbase Document</td>
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<tr>
<td>101.LAB**</td>
<td>XBRL Taxonomy Extension Label Linkbase Document</td>
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<tr>
<td>101.PRE**</td>
<td>XBRL Taxonomy Extension Presentation Linkbase Document</td>
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</tbody>
</table>

† Management contract or compensatory arrangement.

* Filed herewith.

++ Confidential treatment has been requested as to certain portions of this exhibit pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.
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** Attached as Exhibit 101 to this Annual Report on Form 10-K are the following formatted in XBRL (eXtensible Business Reporting Language): (i) Consolidated Statements of Earnings for the fiscal years ended September 30, 2011, October 1, 2010 and October 2, 2009; (ii) Consolidated Balance Sheets at September 30, 2011 and October 1, 2010; (iii) Consolidated Statements of Cash Flows for the fiscal years ended September 30, 2011, October 1, 2010 and October 2, 2009; (iv) Consolidated Statements of Stockholders’ Equity and Comprehensive Earnings for the fiscal years ended September 30, 2011, October 1, 2010 and October 2, 2009; and (iv) Notes to Consolidated Financial Statements for fiscal year ended September 30, 2011.
CHANGE IN CONTROL AGREEMENT
FOR CHIEF EXECUTIVE OFFICER

CHANGE IN CONTROL AGREEMENT

THIS CHANGE IN CONTROL AGREEMENT (“Agreement”) is entered into effective as of __________, by and between VARIAN MEDICAL SYSTEMS, INC., a Delaware corporation (the “Company”) 1, and __________, an employee of the Company (“Employee”).

The Company’s Board of Directors (the “Board”) has determined that it is in the best interest of the Company and its stockholders for the Company to agree to pay Employee termination compensation in the event Employee should leave the employ of the Company under the circumstances described below. The Board recognizes that the possibility of a proposal from a third person, whether or not solicited by the Company, concerning a possible “Change in Control” of the Company (as such language is defined in Section 3(d)) will be unsettling to Employee. Therefore, the arrangements set forth in this Agreement are being made to help assure a continuing dedication by Employee to Employee’s duties to the Company notwithstanding the proposal or occurrence of a Change in Control. The Board believes it imperative, should the Company receive any proposal from a third party, that Employee, without being influenced by the uncertainties of Employee’s own situation, be able to assess and advise the Board whether such proposals are in the best interest of the Company and its stockholders, and to enable Employee to take action regarding such proposals as the Board might determine to be appropriate. The Board also wishes to demonstrate to key personnel that the Company desires to enhance management relations and its ability to retain and, if needed, to attract new management, and intends to ensure that loyal and dedicated management personnel are treated fairly.

In view of the foregoing, the Company and Employee agree as follows:

1. EFFECTIVE DATE AND TERM OF AGREEMENT.

This Agreement is effective and binding on the Company and Employee as of the date hereof; provided, however, that, subject to Section 2 (d), the provisions of Sections 3 and 4 shall become operative only upon the Change in Control Date.

1 “Company” shall include the Company, any successor to the Company’s business and/or assets, and any party which executes and delivers the agreement required by Section 6(e) or which otherwise becomes bound by the terms and conditions of this Agreement by operation of law or otherwise.
2. EMPLOYMENT OF EMPLOYEE.
   (a) Except as provided in Sections 2(b), 2(c) and 2(d), nothing in this Agreement shall affect any right which Employee may otherwise have to terminate Employee’s employment, nor shall anything in this Agreement affect any right which the Company may have to terminate Employee’s employment at any time in any lawful manner.

   (b) In the event of a Potential Change in Control, to be eligible to receive the benefits provided by this Agreement, Employee will not voluntarily leave the employ of the Company, and will continue to perform Employee’s regular duties and the services specified in the recitals of this Agreement until the Change in Control Date. Should Employee voluntarily terminate employment prior to the Change in Control Date, this Agreement shall lapse upon such termination and be of no further force or effect.

   (c) If Employee’s employment terminates on or after the Change in Control Date as provided under Sections 3 and 4, the Company will provide to Employee the payments and benefits as provided in Sections 3 and 4.

   (d) If Employee’s employment is terminated by the Company without Cause prior to the Change in Control Date but on or after a Potential Change in Control Date, subject to Section 4(d), then the Company will provide to Employee the payments and benefits described in Sections 3 and 4 unless the Company reasonably demonstrates that Employee’s termination of employment neither (i) was at the request of a third party who has taken steps reasonably calculated to effect a Change in Control nor (ii) arose in connection with or in anticipation of a Change in Control. Such payments and benefits will be paid within five (5) business days following the 60th day after the Employee’s Separation from Service except that the stock option and restricted stock acceleration benefits described in Section 4(a)(iii) shall be provided on the Change in Control Date and accelerated restricted stock units outstanding on the date of this Agreement shall be settled on their originally scheduled vesting dates. In the event that a Change in Control is not consummated, Employee shall return to the Company any payments and benefits provided to the Employee under this Section 2(d).

3. TERMINATION FOLLOWING CHANGE IN CONTROL.
   (a) If a Change in Control shall have occurred, Employee shall be entitled to the benefits provided in Section 4 upon the subsequent termination of Employee’s employment within the applicable period set forth in Section 4 unless such termination is due to Employee’s death, Retirement or Disability or is for Cause or is effected by Employee other than for Good Reason (as such terms are defined in Section 3(d)).

   (b) If within eighteen (18) months after a Change in Control, Employee incurs a Separation from Service by reason of Employee’s death or Disability, Employee (or, if applicable, his or her estate) shall be entitled to death or long-term disability benefits from the Company no less favorable than the most favorable benefits to which
Employee would have been entitled had the death or Disability occurred at any time during the period commencing one (1) year prior to the Change in Control. To the extent such benefits are taxable to Employee, the benefits provided during the calendar year shall not affect the benefits to be provided in any other calendar year and the benefits shall not be subject to liquidation or exchange for another benefit.

(c) If Employee’s employment shall be terminated by the Company for Cause or by Employee other than for Good Reason during the term of this Agreement, the Company shall pay Employee’s base salary through the date of termination at the rate in effect at the time notice of termination is given, and the Company shall have no further obligations to Employee under this Agreement.

(d) For purposes of this Agreement:

“Base Salary” shall mean the annual base salary paid to Employee immediately prior to a Change in Control, provided that such amount shall in no event be less than the annual base salary paid to Employee during the one (1) year period immediately prior to the Change in Control.

A “Change in Control” shall be deemed to have occurred if:

(i) Any individual or group constituting a “person”, as such term is used in Sections 13(d) and 14(d)(2) of the Exchange Act (other than (A) the Company or any of its subsidiaries or (B) any trustee or other fiduciary holding securities under an employee benefit plan of the Company or of any of its subsidiaries), is or becomes the beneficial owner, directly or indirectly, of securities of the Company representing thirty percent (30%) or more of the combined voting power of the Company’s outstanding securities then entitled ordinarily (and apart from rights accruing under special circumstances) to vote for the election of directors; or

(ii) Continuing Directors cease to constitute at least a majority of the Board; or

(iii) there occurs a reorganization, merger, consolidation or other corporate transaction involving the Company (a “Transaction”), in each case with respect to which the stockholders of the Company immediately prior to such Transaction do not, immediately after the Transaction, own more than 50% of the combined voting power of the Company or other corporation resulting from such Transaction; or

(iv) all or substantially all of the assets of the Company are sold, liquidated or distributed;

provided, however, that a “Change in Control” shall not be deemed to have occurred under this Agreement if, prior to the occurrence of a specified event that would otherwise constitute a Change in Control hereunder, the disinterested Continuing

3
Directors then in office, by a majority vote thereof, determine that the occurrence of such specified event shall not be deemed to be a Change in Control with respect to Employee hereunder if the Change in Control results from actions or events in which Employee is a participant in a capacity other than solely as an officer, employee or director of the Company.

“Change in Control Date” shall mean the date on which a Change in Control occurs.

“Cause” shall mean:

(i) The continued willful failure of Employee to perform Employee’s duties to the Company (other than any such failure resulting from Employee’s incapacity due to physical or mental illness) after written notice thereof (specifying the particulars thereof in reasonable detail) and a reasonable opportunity to be heard and cure such failure are given to Employee by the Board or a committee thereof; or

(ii) The willful commission by Employee of a wrongful act that caused or was reasonably likely to cause substantial damage to the Company, or an act of fraud in the performance of Employee’s duties on behalf of the Company; or

(iii) The conviction of, or plea of nolo contendere by, Employee for commission of a felony in connection with the performance of Employee’s duties on behalf of the Company; or

(iv) The order of a federal or state regulatory authority having jurisdiction over the Company or its operations or by a court of competent jurisdiction requiring the termination of Employee’s employment by the Company.

“Continuing Directors” shall mean the directors of the Company in office on the date hereof and any successor to any such director who was nominated or selected by a majority of the Continuing Directors in office at the time of the director’s nomination or selection and who is not an “affiliate” or “associate” (as defined in Regulation 12B under the Exchange Act) of any person who is the beneficial owner, directly or indirectly, of securities representing ten percent (10%) or more of the combined voting power of the Company’s outstanding securities then entitled ordinarily to vote for the election of directors.

“Disability” shall mean Employee’s incapacity due to physical or mental illness such that Employee shall have become qualified to receive benefits under the Company’s long-term disability plan as in effect on the date of the Change in Control.

“Dispute” shall mean, in the case of termination of Employee’s employment for Disability or Cause, that Employee challenges the existence of Disability or Cause, and in the case of termination of Employee’s employment for Good Reason, that the Company challenges the existence of Good Reason for termination of Employee’s employment.

“Good Reason” shall mean:

(i) The failure to appoint Employee as Chief Executive Officer of the combined or acquiring entity, reporting to its Board of Directors; or

(ii) A reduction of Employee’s total compensation as the same may have been increased from time to time after the Change in Control Date other than (A) a reduction implemented with the consent of Employee or (B) a reduction that is generally comparable (proportionately) to compensation reductions imposed on senior executives of the Company generally; or

(iii) The failure to provide to Employee the benefits and perquisites, including participation on a comparable basis in the Company’s stock option, incentive, and other similar plans in which employees of the Company of comparable title and salary grade participate, as were provided to Employee immediately prior to a Change in Control, or with a package of benefits and perquisites that are substantially comparable in all material respects to such benefits and perquisites provided prior to the Change in Control; or

(iv) The relocation of the office of the Company where Employee is providing Employee’s services to the Company immediately prior to the Change in Control Date (the “CIC Location”) to a location which is more than 50 miles away from the CIC Location or the Company’s requiring Employee to be based more than 50 miles away from the CIC Location (except for required travel on the Company’s business to an extent substantially consistent with Employee’s customary business travel obligations in the ordinary course of business prior to the Change in Control Date);

(v) The failure of the Company to obtain promptly upon any Change in Control the express written assumption of an agreement to perform this Agreement by any successor as contemplated in Section 6(e); or

(vi) The attempted termination of Employee’s employment for Cause on grounds insufficient to constitute a basis of termination for Cause under this Agreement; or

(vii) The failure of the Company to promptly make any payment into escrow when so required by Section 3(f).

Notwithstanding anything in this Agreement to the contrary, a termination for “Good Reason” shall not occur unless the Employee has provided written notice to the Company of the Employee’s intention to terminate employment and the specific
reason(s) for such “Good Reason”. Following receipt of such notice, the Company shall have the right, within fifteen (15) days of receiving such written notice, to cure the circumstances giving rise to such “Good Reason”.

“Potential Change in Control” shall mean the earliest to occur of (a) the execution of an agreement or letter of intent, the consummation of the transactions described in which would result in a Change in Control, (b) the approval by the Board of a transaction or series of transactions, the consummation of which would result in a Change in Control, or (c) the public announcement of a tender offer for the Company’s voting stock, the completion of which would result in a Change in Control; provided, that no such event shall be a “Potential Change in Control” unless (i) in the case of any agreement or letter of intent described in clause (a), the transaction described therein is subsequently consummated by the Company and the other party or parties to such agreement or letter of intent and thereupon constitutes a “Change in Control”, (ii) in the case of any Board-approved transaction described in clause (b), the transaction so approved is subsequently consummated and thereupon constitutes a “Change in Control” or (iii) in the case of any tender offer described in clause (c), such tender offer is subsequently completed and such completion thereupon constitutes a “Change in Control”.

“Potential Change in Control Date” shall mean the date on which a Potential Change in Control occurs.

“Retirement” shall mean Employee’s actual retirement after reaching the normal or early retirement date provided for in the Company’s Retirement and Profit-Sharing Program as in effect on the date of Employee’s termination of employment.

“Separation from Service” shall have the meaning set forth in Section 409A of the Code.

(e) Any termination of employment by the Company or by Employee shall be communicated by written notice, specify the date of termination, state the specific basis for termination and set forth in reasonable detail the facts and circumstances of the termination in order to provide a basis for determining the entitlement to any payments under this Agreement.

(f) If within thirty (30) days after notice of termination is given, the party to whom the notice was given notifies the other party that a Dispute exists, the parties will promptly pursue resolution of such Dispute with reasonable diligence; provided, however, that pending resolution of any such Dispute, the Company shall pay 75% of any amounts which would otherwise be due Employee pursuant to Section 4 if such Dispute did not exist into escrow pending resolution of such Dispute and pay 25% of such amounts to Employee. Employee agrees to return to the Company any such amounts to which it is ultimately determined that he is not entitled. If, following a final, nonappealable determination that Employee is not entitled to retain all or any portion of this amount, Employee fails to return such excess amount, then Employee shall be
required to pay the full costs of recovering such amount. Any escrowed amounts that are released shall otherwise be paid as required under this Agreement and, in no case, later than the end of the calendar year in which the Company and Employee enter into a legally binding settlement of such dispute, the Company concedes the amount is payable, or the Company is required to make such payment pursuant to a final and nonappealable judgment or other binding decision.

4. **PAYMENTS AND BENEFITS UPON TERMINATION.**

   (a) If within eighteen (18) months after a Change in Control, the Company terminates Employee’s employment other than by reason of Employee’s death, Disability, Retirement or for Cause, or if Employee terminates Employee’s employment for Good Reason, then the Employee shall be entitled to the following payments and benefits following Employee’s Separation from Service:

      (i) The Company shall pay to Employee as compensation for services rendered, no later than five (5) business days following the Release Deadline, a lump sum severance payment equal to 3.00 multiplied by the sum of: (A) Employee’s Base Salary; and (B) the greater of (x) the Employee’s most recently established target annual bonus under the Company’s Management Incentive Plan (the “MIP”) and (y) the average annual bonus that was paid to Employee in the three (3) fiscal years ending prior to the date of termination under the MIP. Notwithstanding the foregoing, if Employee has not completed at least three (3) full fiscal years of service with the Company prior to Employee’s termination date, then the amount determined in (y) above, shall be based on the average annual bonus for the number of full fiscal years Employee has completed.

      (ii) The Company shall pay to Employee as compensation for services rendered, no later than five (5) business days following the Release Deadline, a lump sum payment equal to a pro rata portion (based on the number of days elapsed during the fiscal year and/or other bonus performance period in which the termination occurs) of Employee’s target bonus under the MIP for the fiscal year and for any other partially completed bonus performance period in which the termination occurs.

      (iii) All waiting periods for the exercise of any stock options granted to Employee and all conditions or restrictions of any restricted stock granted to Employee shall terminate, and all such options shall be exercisable in full according to their terms, and the restricted stock shall be transferred to Employee as soon as reasonably practicable thereafter. In addition, all conditions or restrictions of any restricted stock units granted to Employee shall terminate, and the stock underlying such units shall be transferred to Employee (x) within five (5) business days following the Release Deadline with respect to awards granted after the date of this Agreement or (y) on the originally scheduled vesting dates for awards outstanding on the date of this Agreement.

      (iv) Employee’s participation as of the date of termination in the life, medical/dental/vision and disability insurance plans and financial/tax counseling plan of
the Company shall be continued on the same terms (including any cost sharing) as if Employee were an employee of the Company (or equivalent benefits provided) until the earlier of Employee’s commencement of substantially equivalent full-time employment with a new employer or twenty-four (24) months after the date of his or her Separation from Service; provided, however, that after the date of his or her Separation from Service, Employee shall no longer be entitled to receive Company-paid executive physicals or, upon expiration of the applicable memberships, Company-paid airline memberships. In the event Employee shall die before the expiration of the period during which the Company is required to continue Employee’s participation in such insurance plans, the participation of Employee’s surviving spouse and family in the Company’s insurance plans shall continue throughout such period.

Notwithstanding the foregoing, to the extent any of the foregoing benefits are not exempt from Section 409A of the Code, such benefits provided under this Section 4(a)(iv) during any calendar year shall not affect such benefits to be provided in any other calendar year and the right to such benefits shall not be subject to liquidation or exchange for another benefit. In addition, the premiums for any medical coverage provided through a self-insured plan under this Section 4(a)(iv) shall be taxable to Employee to the extent required to avoid the taxes imposed by Section 105(h) and Section 409A of the Code. To the extent any of the foregoing benefits are not exempt from Section 409A of the Code and are subject to the delay described in Section 4(c) hereof, except as would constitute a violation of Section 409A of the Code, Employee shall have the right to pay for and obtain such benefits during such delay period and shall be reimbursed by the Company for any such payments upon expiration of such delay period.

(v) Employee may elect within 90 days after his or her Separation from Service to purchase any automobile then in the possession of Employee and subject to a lease of which the Company is the lessor by payment to the Company of the residual value set forth in the lease, without any increase for remaining lease payments during the term or other lease breakage costs.

(vi) All payments and benefits provided under this Agreement shall be subject to applicable tax withholding.

(b) Following Employee’s termination of employment for any reason, the Company shall have the unconditional right to reduce any payments owed to Employee hereunder by the amount of any due and unpaid principal and interest on any loans by the Company to Employee and Employee hereby agrees and consents to such right on the part of the Company. Any loan offset made under this Section 4(b) shall be made at the same time the payments reduced hereunder would have otherwise been made and otherwise in a manner that would not result in the imposition of taxes to Employee under Section 409A of the Code. If it is not possible to make such offset without the imposition of taxes to Employee under Section 409A of the Code, such offset shall not be made.
(c) In the event this Agreement or any compensation or benefit paid to Employee hereunder is deemed to be subject to Section 409A of the Code, Employee and the Company agree to negotiate in good faith to adopt such amendments that are necessary to comply with Section 409A of the Code or to exempt such compensation or benefits from Section 409A. In addition, to the extent (i) any compensation or benefits to which Employee becomes entitled under this agreement, or any agreement or plan referenced herein, in connection with Employee’s termination of employment with the Company constitute deferred compensation subject to Section 409A of the Code and (ii) Employee is deemed at the time of such termination of employment to be a “specified” employee under Section 409A of the Code, then such compensation or benefits shall not be made or commence until the earliest of (i) the expiration of the six (6)-month period measured from the date of Employee’s “separation from service” (as such term is at the time defined in Treasury Regulations under Section 409A of the Code with the Company; or (ii) the date of Employee’s death following such separation from service; provided, however, that such deferral shall only be effected to the extent required to avoid adverse tax treatment to Employee, including (without limitation) the additional twenty percent (20%) tax for which Employee would otherwise be liable under Section 409A(a)(1)(B) of the Code in the absence of such deferral. During any period compensation or benefits to Employee are deferred pursuant to the foregoing, Employee shall be entitled to interest on such deferral at a per annum rate equal to the highest rate of interest applicable to six (6)-month money market accounts offered by the following institutions: Citibank N.A., Wells Fargo Bank, N.A. or Bank of America, on the date of such “separation from service.” Upon the expiration of the applicable deferral period, any compensation or benefits which would have otherwise been paid during that period (whether in a single sum or in installments) in the absence of this paragraph shall be paid to Employee or Employee’s beneficiary in one lump sum.

(d) Any payment pursuant to this Section 4 shall be conditioned upon the Employee signing and not revoking a release in the form attached as Exhibit A (the “Release”) not later than 60 days after the Employee’s Separation from Service (such 60th day, the “Release Deadline”). The Employee shall not be entitled to such payment, and no payment shall be made to the Employee, until after the Release Deadline and subject to the Release having become effective on or prior to the Release Deadline. The Company shall furnish such Release to the Employee in connection with the Employee’s Separation from Service. If the Employee has signed the Release prior to the time the Company so furnishes such Release to the Employee, the Employee will be required to again sign and not revoke the Release in connection with the Employee’s Separation from Service in order to receive payments hereunder (as described above), and the prior signed Release shall be null and void.

5. LIMITATION ON PAYMENTS.

In the event that the payments and other benefits provided for in this Agreement or otherwise payable to Employee (i) constitute “parachute payments” within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the
“Code”) and (ii) would be subject to the excise tax imposed by Section 4999 of the Code (the “Excise Tax”), then Employee’s payments and benefits under this Agreement or otherwise payable to Employee shall be either delivered in full (without the Company paying any portion of the Excise Tax), or delivered as to such lesser extent which would result in no portion of such payments and benefits being subject to the Excise Tax, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the Excise Tax, results in the receipt by Employee on an after-tax basis of the greatest amount of payments and benefits, notwithstanding that all or some portion of such payments and benefits may subject to the Excise Tax. Unless the Company and Employee otherwise agree in writing, any determination required under this Section 5 shall be made in writing by a nationally-recognized independent public accounting firm designated by agreement between Employee and Company (the “Accountants”), whose determination shall be conclusive and binding upon Employee and the Company for all purposes. For purposes of making the calculations required by this Section 5, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Section 280G and 4999 of the Code. The Company and Employee shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section 5.

Any reduction in payments and/or benefits required by this Section 5 shall occur in the following order as reasonably determined by the Accountants: (1) reduction of vesting acceleration of “out-of-the-money” stock options or stock appreciation rights, (2) reduction of cash payments; (3) reduction of non-cash/non-equity-based payments or benefits and (4) reduction of vesting acceleration of equity-based awards (other than “out-of-the-money” stock options or stock appreciation rights); provided, however, that any non-taxable payments or benefits shall be reduced last in accordance with the same categorical ordering rule. In the event items described in (2) or (3) are to be reduced, reduction shall occur in reverse chronological order such that the payment or benefit owed on the latest date following the occurrence of the event triggering the Excise Tax will be the first payment to be reduced (with reductions made pro-rata in the event payments are owed at the same time). In the event that acceleration of vesting of equity-based awards is to be reduced, such acceleration of vesting shall be cancelled in a manner such as to obtain the best economic benefit for Employee (with reductions made pro-rata if economically equivalent), as determined by the Accountants. In no event will Employee exercise any discretion with respect to the ordering of any reduction of payments or benefits pursuant to this Section 5.

6. GENERAL.

(a) Employee shall retain in confidence under the conditions of the Company’s confidentiality agreement with Employee any proprietary or other confidential information known to Employee concerning the Company and its business so long as such information is not publicly disclosed and disclosure is not required by an order of any governmental body or court. If required, Employee shall return to the Company any memoranda, documents or other materials proprietary to the Company.
(b) While employed by the Company and following the termination of such employment after a Change in Control for a period of two (2) years, Employee shall not:

(i) whether for Employee’s own account or for the account of any other individual, partnership, firm, corporation or other business organization, intentionally solicit, endeavor to entice away from the Company or a subsidiary of the Company (each, a “Protected Party”), or otherwise interfere with the relationship of a Protected Party with, any person who is employed by a Protected Party or any person or entity who is, or was within the then most recent twelve (12) month period, a customer or client of a Protected Party; or

(ii) without the prior written consent of the Protected Party, in any geographic area in which the Protected Party is then conducting business, directly or indirectly own an interest in, manage, operate, join, control, lend money or render financial or other assistance to or participate in or be connected with, as an officer, employee, partner, stockholder, consultant or otherwise, any individual, partnership, firm, corporation or other business organization or entity that is engaged in any business in which the Protected Party is actively engaged at the time; provided, however, that the restrictions in this Section 6(b)(ii) shall not apply to (A) any non-employee directorships held by Employee as of the date hereof or (B) ownership by Employee for personal investment purposes only of not in excess of 1% of the voting stock of any publicly held corporation.

Employee acknowledges that a breach of any of the covenants contained in this Section 6(b) may result in material irreparable injury to the Company for which there is no adequate remedy at law, that it may not be possible to measure damages for such injuries precisely and that, in the event of such a breach, any payments remaining under the terms of this Agreement shall cease and the Company may be entitled to obtain a temporary restraining order and/or a preliminary or permanent injunction restraining Employee from engaging in activities prohibited by this Section 6(b) or such other relief as may be required to specifically enforce any of the covenants in this Section 6(b). Employee agrees to and hereby does submit to in personam jurisdiction before each and every such court in the State of California, County of Santa Clara, for that purpose. This Section 6(b) shall survive any termination of this Agreement.

(c) If litigation is brought by Employee to enforce or interpret any provision contained in this Agreement, the Company shall indemnify Employee for Employee’s reasonable attorney’s fees and disbursements incurred in such litigation and pay prejudgment interest on any money judgment obtained by Employee calculated at the prime rate of interest in effect from time to time at the Bank of America, San Francisco, from the date that payment should have been made under the Agreement, provided that Employee shall not have been found by the court in which such litigation is pending to have had no cause in bringing the action, or to have acted in bad faith, which finding
must be final with the time to appeal therefrom having expired and no appeal having been taken. Any payment made pursuant to this Section 6 (c) shall be made promptly and no later than the end of the calendar year in which such fees or disbursements were incurred or in which such judgment was obtained, as applicable.

(d) Except as provided in Section 4, the Company’s obligation to pay to Employee the compensation and to make the arrangements provided in this Agreement shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, any setoff, counterclaim, recoupment, defense or other right which the Company may have against Employee or anyone else. All amounts payable by the Company hereunder shall be paid without notice or demand. Subject to Section 4(a)(iv), Employee shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment.

(e) The Company shall require any successor, whether direct or indirect, by purchase, merger, consolidation or otherwise, to all or substantially all of the business and/or assets of the Company, by written agreement to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place.

(f) This Agreement shall inure to the benefit of and be enforceable by Employee’s heirs, successors and assigns. If Employee should die while any amounts would still be payable to Employee hereunder if Employee had continued to live, all such amounts shall be paid in accordance with the terms of this Agreement to Employee’s heirs, successors and assigns.

(g) For the purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered mail, return receipt requested, postage prepaid, addressed as follows:

If to Employee: Varian Medical Systems, Inc.

3100 Hansen Way
Palo Alto, CA 94304-1000
Attn: Vice President, Human Resources

or to such other address as either party furnishes to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

(h) This Agreement shall constitute the entire agreement between Employee and the Company concerning the subject matter of this Agreement.
(i) The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California without giving effect to the provisions, principles or policies thereof relating to choice or conflict of laws. The invalidity or unenforceability of any provision of this Agreement in any circumstance shall not affect the validity or enforceability of such provision in any other circumstance or the validity or enforceability of any other provision of this Agreement, and, except to the extent such provision is invalid or unenforceable, this Agreement shall remain in full force and effect. Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating or affecting the remaining provisions hereof in such jurisdiction, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. This Section 6(i) shall survive any termination of this Agreement.

(j) This Agreement may be amended or terminated by the Company pursuant to a resolution adopted by the Board at any time prior to a Potential Change in Control Date. After a Change in Control Date or a Potential Change in Control Date, this Agreement may only be amended or terminated in writing with the consent of Employee.

(k) No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement and this Agreement shall supersede all prior agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties acknowledge that they have read and understand the terms of this Agreement and have executed this Agreement to be effective as of 

VARIAN MEDICAL SYSTEMS, INC. 

EMPLOYEE 

By: 
Title: 

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CHANGE IN CONTROL AGREEMENT
FOR SENIOR EXECUTIVES (Chief Financial Officer and General Counsel)

CHANGE IN CONTROL AGREEMENT

THIS CHANGE IN CONTROL AGREEMENT ("Agreement") is entered into effective as of [date], by and between VARIAN MEDICAL SYSTEMS, INC., a Delaware corporation (the “Company”) ¹, and [Employee], an employee of the Company ("Employee").

The Company’s Board of Directors (the “Board”) has determined that it is in the best interest of the Company and its stockholders for the Company to agree to pay Employee termination compensation in the event Employee should leave the employ of the Company under the circumstances described below. The Board recognizes that the possibility of a proposal from a third person, whether or not solicited by the Company, concerning a possible “Change in Control” of the Company (as such language is defined in Section 3(d)) will be unsettling to Employee. Therefore, the arrangements set forth in this Agreement are being made to help assure a continuing dedication by Employee to Employee’s duties to the Company notwithstanding the proposal or occurrence of a Change in Control. The Board believes it imperative, should the Company receive any proposal from a third party, that Employee, without being influenced by the uncertainties of Employee’s own situation, be able to assess and advise the Board whether such proposals are in the best interest of the Company and its stockholders, and to enable Employee to take action regarding such proposals as the Board might determine to be appropriate. The Board also wishes to demonstrate to key personnel that the Company desires to enhance management relations and its ability to retain and, if needed, to attract new management, and intends to ensure that loyal and dedicated management personnel are treated fairly.

In view of the foregoing, the Company and Employee agree as follows:

1. EFFECTIVE DATE AND TERM OF AGREEMENT.

This Agreement is effective and binding on the Company and Employee as of the date hereof; provided, however, that, subject to Section 2(d), the provisions of Sections 3 and 4 shall become operative only upon the Change in Control Date.

¹ “Company” shall include the Company, any successor to the Company’s business and/or assets, and any party which executes and delivers the agreement required by Section 6(e) or which otherwise becomes bound by the terms and conditions of this Agreement by operation of law or otherwise.
2. EMPLOYMENT OF EMPLOYEE.

(a) Except as provided in Sections 2(b), 2(c) and 2(d), nothing in this Agreement shall affect any right which Employee may otherwise have to terminate Employee’s employment, nor shall anything in this Agreement affect any right which the Company may have to terminate Employee’s employment at any time in any lawful manner.

(b) In the event of a Potential Change in Control, to be eligible to receive the benefits provided by this Agreement, Employee will not voluntarily leave the employ of the Company, and will continue to perform Employee’s regular duties and the services specified in the recitals of this Agreement until the Change in Control Date. Should Employee voluntarily terminate employment prior to the Change in Control Date, this Agreement shall lapse upon such termination and be of no further force or effect.

(c) If Employee’s employment terminates on or after the Change in Control Date as provided under Sections 3 and 4, the Company will provide to Employee the payments and benefits as provided in Sections 3 and 4.

(d) If Employee’s employment is terminated by the Company without Cause prior to the Change in Control Date but on or after a Potential Change in Control Date, subject to Section 4(d), then the Company will provide to Employee the payments and benefits described in Sections 3 and 4 unless the Company reasonably demonstrates that Employee’s termination of employment neither (i) was at the request of a third party who has taken steps reasonably calculated to effect a Change in Control nor (ii) arose in connection with or in anticipation of a Change in Control. Such payments and benefits will be paid within five (5) business days following the 60th day after the Employee’s Separation from Service except that the stock option and restricted stock acceleration benefits described in Section 4(a)(iii) shall be provided on the Change in Control Date and accelerated restricted stock units outstanding on the date of this Agreement shall be settled on their originally scheduled vesting dates. In the event that a Change in Control is not consummated, Employee shall return to the Company any payments and benefits provided to the Employee under this Section 2(d).

3. TERMINATION FOLLOWING CHANGE IN CONTROL.

(a) If a Change in Control shall have occurred, Employee shall be entitled to the benefits provided in Section 4 upon the subsequent termination of Employee’s employment within the applicable period set forth in Section 4 unless such termination is due to Employee’s death, Retirement or Disability or is for Cause or is effected by Employee other than for Good Reason (as such terms are defined in Section 3(d)).

(b) If within eighteen (18) months after a Change in Control, Employee incurs a Separation from Service by reason of Employee’s death or Disability, Employee (or, if
applicable, his or her estate) shall be entitled to death or long-term disability benefits from the Company no less favorable than the most favorable benefits to which Employee would have been entitled had the death or Disability occurred at any time during the period commencing one (1) year prior to the Change in Control. To the extent such benefits are taxable to Employee, the benefits provided during the calendar year shall not affect the benefits to be provided in any other calendar year and the benefits shall not be subject to liquidation or exchange for another benefit.

(c) If Employee’s employment shall be terminated by the Company for Cause or by Employee other than for Good Reason during the term of this Agreement, the Company shall pay Employee’s base salary through the date of termination at the rate in effect at the time notice of termination is given, and the Company shall have no further obligations to Employee under this Agreement.

(d) For purposes of this Agreement:

“Base Salary” shall mean the annual base salary paid to Employee immediately prior to a Change in Control, provided that such amount shall in no event be less than the annual base salary paid to Employee during the one (1) year period immediately prior to the Change in Control.

A “Change in Control” shall be deemed to have occurred if:

(i) Any individual or group constituting a “person”, as such term is used in Sections 13(d) and 14(d)(2) of the Exchange Act (other than (A) the Company or any of its subsidiaries or (B) any trustee or other fiduciary holding securities under an employee benefit plan of the Company or of any of its subsidiaries), is or becomes the beneficial owner, directly or indirectly, of securities of the Company representing thirty percent (30%) or more of the combined voting power of the Company’s outstanding securities then entitled ordinarily (and apart from rights accruing under special circumstances) to vote for the election of directors; or

(ii) Continuing Directors cease to constitute at least a majority of the Board; or

(iii) there occurs a reorganization, merger, consolidation or other corporate transaction involving the Company (a “Transaction”), in each case with respect to which the stockholders of the Company immediately prior to such Transaction do not, immediately after the Transaction, own more than 50% of the combined voting power of the Company or other corporation resulting from such Transaction; or

(iv) all or substantially all of the assets of the Company are sold, liquidated or distributed;
provided, however, that a “Change in Control” shall not be deemed to have occurred under this Agreement if, prior to the occurrence of a specified event that would otherwise constitute a Change in Control hereunder, the disinterested Continuing Directors then in office, by a majority vote thereof, determine that the occurrence of such specified event shall not be deemed to be a Change in Control with respect to Employee hereunder if the Change in Control results from actions or events in which Employee is a participant in a capacity other than solely as an officer, employee or director of the Company.

“Change in Control Date” shall mean the date on which a Change in Control occurs.

“Cause” shall mean:

(i) The continued willful failure of Employee to perform Employee’s duties to the Company (other than any such failure resulting from Employee’s incapacity due to physical or mental illness) after written notice thereof (specifying the particulars thereof in reasonable detail) and a reasonable opportunity to be heard and cure such failure are given to Employee by the Board or a committee thereof; or

(ii) The willful commission by Employee of a wrongful act that caused or was reasonably likely to cause substantial damage to the Company, or an act of fraud in the performance of Employee’s duties on behalf of the Company; or

(iii) The conviction of, or plea of nolo contendere by, Employee for commission of a felony, or plea of nolo contendere by, in connection with the performance of Employee’s duties on behalf of the Company; or

(iv) The order of a federal or state regulatory authority having jurisdiction over the Company or its operations or by a court of competent jurisdiction requiring the termination of Employee’s employment by the Company.

“Continuing Directors” shall mean the directors of the Company in office on the date hereof and any successor to any such director who was nominated or selected by a majority of the Continuing Directors in office at the time of the director’s nomination or selection and who is not an “affiliate” or “associate” (as defined in Regulation 12B under the Exchange Act) of any person who is the beneficial owner, directly or indirectly, of securities representing ten percent (10%) or more of the combined voting power of the Company’s outstanding securities then entitled ordinarily to vote for the election of directors.

“Disability” shall mean Employee’s incapacity due to physical or mental illness such that Employee shall have become qualified to receive benefits under the Company’s long-term disability plan as in effect on the date of the Change in Control.
“Dispute” shall mean, in the case of termination of Employee’s employment for Disability or Cause, that Employee challenges the existence of Disability or Cause, and in the case of termination of Employee’s employment for Good Reason, that the Company challenges the existence of Good Reason for termination of Employee’s employment.


“Equivalent Position” shall mean an employment position that:

(i) is in a substantive area of competence (e.g., finance, accounting, legal, operations management or human resources) that is consistent with Employee’s experience and not materially different from the substantive area of competence of Employee’s position with the Company prior to the Change in Control;

(ii) requires that Employee serve in a role and perform duties that are functionally equivalent to the role and duties performed by Employee for the Company prior to the Change in Control;

(iii) carries a title that does not connote a lesser rank or corporate role than is connoted by Employee’s title with the Company prior to the Change in Control;

(iv) does not constitute a material, adverse change in Employee’s responsibilities or duties, when compare to Employee’s responsibilities or duties with the Company prior to the Change in Control;

(v) requires that Employee be deemed an executive officer (for purposes of the rules promulgated under Section 16 of the Securities Exchange Act of 1934) of a publicly-traded successor entity having net assets or annual revenues that are no less than those of the Company prior to the Change in Control; and

(vi) has Employee reporting directly to the Chief Executive Officer of the combined or acquiring company.

“Good Reason” shall mean:

(i) The assignment to Employee of a position, title, responsibilities or duties such that he no longer holds an Equivalent Position; or

(ii) A reduction of Employee’s total compensation as the same may have been increased from time to time after the Change in Control Date other than (A) a reduction implemented with the consent of Employee or (B) a reduction that is generally comparable (proportionately) to compensation reductions imposed on senior executives of the Company generally; or
(iii) The failure to provide to Employee the benefits and perquisites, including participation on a comparable basis in the Company’s stock option, incentive, and other similar plans in which employees of the Company of comparable title and salary grade participate, as were provided to Employee immediately prior to a Change in Control, or with a package of benefits and perquisites that are substantially comparable in all material respects to such benefits and perquisites provided prior to the Change in Control; or

(iv) The relocation of the office of the Company where Employee is providing Employee’s services to the Company immediately prior to the Change in Control Date (the “CIC Location”) to a location which is more than 50 miles away from the CIC Location or the Company’s requiring Employee to be based more than 50 miles away from the CIC Location (except for required travel on the Company’s business to an extent substantially consistent with Employee’s customary business travel obligations in the ordinary course of business prior to the Change in Control Date);

(v) The failure of the Company to obtain promptly upon any Change in Control the express written assumption of an agreement to perform this Agreement by any successor as contemplated in Section 6(e); or

(vi) The attempted termination of Employee’s employment for Cause on grounds insufficient to constitute a basis of termination for Cause under this Agreement; or

(vii) The failure of the Company to promptly make any payment into escrow when so required by Section 3(f).

Notwithstanding anything in this Agreement to the contrary, a termination for “Good Reason” shall not occur unless the Employee has provided written notice to the Company of the Employee’s intention to terminate employment and the specific reason(s) for such “Good Reason”. Following receipt of such written notice, the Company shall have the right, within fifteen (15) days of receiving such notice, to cure the circumstances giving rise to such “Good Reason”.

“Potential Change in Control” shall mean the earliest to occur of (a) the execution of an agreement or letter of intent, the consummation of the transactions described in which would result in a Change in Control, (b) the approval by the Board of a transaction or series of transactions, the consummation of which would result in a Change in Control, or (c) the public announcement of a tender offer for the Company’s voting stock, the completion of which would result in a Change in Control; provided, that no such event shall be a “Potential Change in Control” unless (i) in the case of any
agreement or letter of intent described in clause (a), the transaction described therein is subsequently consummated by the Company and the other party or parties to such agreement or letter of intent and thereupon constitutes a “Change in Control”, (ii) in the case of any Board-approved transaction described in clause (b), the transaction so approved is subsequently consummated and thereupon constitutes a “Change in Control” or (iii) in the case of any tender offer described in clause (c), such tender offer is subsequently completed and such completion thereupon constitutes a “Change in Control”.

“Potential Change in Control Date” shall mean the date on which a Potential Change in Control occurs.

“Retirement” shall mean Employee’s actual retirement after reaching the normal or early retirement date provided for in the Company’s Retirement and Profit-Sharing Program as in effect on the date of Employee’s termination of employment.

“Separation from Service” shall have the meaning set forth in Section 409A of the Code.

(e) Any termination of employment by the Company or by Employee shall be communicated by written notice, specify the date of termination, state the specific basis for termination and set forth in reasonable detail the facts and circumstances of the termination in order to provide a basis for determining the entitlement to any payments under this Agreement.

(f) If within thirty (30) days after notice of termination is given, the party to whom the notice was given notifies the other party that a Dispute exists, the parties will promptly pursue resolution of such Dispute with reasonable diligence; provided, however, that pending resolution of any such Dispute, the Company shall pay 75% of any amounts which would otherwise be due Employee pursuant to Section 4 if such Dispute did not exist into escrow pending resolution of such Dispute and pay 25% of such amounts to Employee. Employee agrees to return to the Company any such amounts to which it is ultimately determined that he is not entitled. If, following a final, nonappealable determination that Employee is not entitled to retain all or any portion of this amount, Employee fails to return such excess amount, then Employee shall be required to pay the full costs of recovering such amount. Any escrowed amounts that are released shall otherwise be paid as required under this Agreement and, in no case, later than the end of the calendar year in which the Company and Employee enter into a legally binding settlement of such dispute, the Company concedes the amount is payable, or the Company is required to make such payment pursuant to a final and nonappealable judgment or other binding decision.
PAYMENTS AND BENEFITS UPON TERMINATION.

(a) If within eighteen (18) months after a Change in Control, the Company terminates Employee’s employment other than by reason of Employee’s death, Disability, Retirement or for Cause, or if Employee terminates Employee’s employment for Good Reason, then the Employee shall be entitled to the following payments and benefits following Employee’s Separation from Service:

(i) The Company shall pay to Employee as compensation for services rendered, no later than five (5) business days following the Release Deadline, a lump sum severance payment equal to 2.50 multiplied by the sum of: (A) Employee’s Base Salary; and (B) the greater of (x) the Employee’s most recently established target annual bonus under the Company’s Management Incentive Plan (the “MIP”) and (y) the average annual bonus that was paid to Employee in the three (3) fiscal years ending prior to the date of termination under the MIP. Notwithstanding the foregoing, if Employee has not completed at least three (3) full fiscal years of service with the Company prior to Employee’s termination date, then the amount determined in (y) above, shall be based on the average annual bonus for the number of full fiscal years Employee has completed.

(ii) The Company shall pay to Employee as compensation for services rendered, no later than five (5) business days following the Release Deadline, a lump sum payment equal to a pro rata portion (based on the number of days elapsed during the fiscal year and/or other bonus performance period in which the termination occurs) of Employee’s target bonus under the MIP for the fiscal year and for any other partially completed bonus performance period in which the termination occurs.

(iii) All waiting periods for the exercise of any stock options granted to Employee and all conditions or restrictions of any restricted stock granted to Employee shall terminate, and all such options shall be exercisable in full according to their terms, and the restricted stock shall be transferred to Employee as soon as reasonably practicable thereafter. In addition, all conditions or restrictions of any restricted stock units granted to Employee shall terminate, and the stock underlying such units shall be transferred to Employee (x) within five (5) business days following the Release Deadline with respect to awards granted after the date of this Agreement or (y) on the originally scheduled vesting dates for awards outstanding on the date of this Agreement.

(iv) Employee’s participation as of the date of termination in the life, medical/dental/vision and disability insurance plans and financial/tax counseling plan of the Company shall be continued on the same terms (including any cost sharing) as if Employee were an employee of the Company (or equivalent benefits provided) until the earlier of Employee’s commencement of substantially equivalent full-time employment with a new employer or twenty-four (24) months after the date of his or her Separation from Service; provided, however, that after the date of his or her Separation from
Service, Employee shall no longer be entitled to receive Company-paid executive physicals or, upon expiration of the applicable memberships, Company-paid airline memberships. In the event Employee shall die before the expiration of the period during which the Company is required to continue Employee’s participation in such insurance plans, the participation of Employee’s surviving spouse and family in the Company’s insurance plans shall continue throughout such period.

Notwithstanding the foregoing, to the extent any of the foregoing benefits are not exempt from Section 409A of the Code, such benefits provided under this Section 4(a)(iv) during any calendar year shall not affect such benefits to be provided in any other calendar year and the right to such benefits shall not be subject to liquidation or exchange for another benefit. In addition, the premiums for any medical coverage provided through a self-insured plan under this Section 4(a)(iv) shall be taxable to Employee to the extent required to avoid the taxes imposed by Section 105(h) and Section 409A of the Code. To the extent any of the foregoing benefits are not exempt from Section 409A of the Code and are subject to the delay described in Section 4(c) hereof, except as would constitute a violation of Section 409A of the Code, Employee shall have the right to pay for and obtain such benefits during such delay period and shall be reimbursed by the Company for any such payments upon expiration of such delay period.

(v) Employee may elect within 90 days after his or her Separation from Service to purchase any automobile then in the possession of Employee and subject to a lease of which the Company is the lessor by payment to the Company of the residual value set forth in the lease, without any increase for remaining lease payments during the term or other lease breakage costs.

(vi) All payments and benefits provided under this Agreement shall be subject to applicable tax withholding.

(b) Following Employee’s termination of employment for any reason, the Company shall have the unconditional right to reduce any payments owed to Employee hereunder by the amount of any due and unpaid principal and interest on any loans by the Company to Employee and Employee hereby agrees and consents to such right on the part of the Company. Any loan offset made under this Section 4(b) shall be made at the same time the payments reduced hereunder would have otherwise been made and otherwise in a manner that would not result in the imposition of taxes to Employee under Section 409A of the Code. If it is not possible to make such offset without the imposition of taxes to Employee under Section 409A of the Code, such offset shall not be made.

(c) In the event this Agreement or any compensation or benefit paid to Employee hereunder is deemed to be subject to Section 409A of the Code, Employee and the Company agree to negotiate in good faith to adopt such amendments that are
necessary to comply with Section 409A of the Code or to exempt such compensation or benefits from Section 409A. In addition, to the extent (i) any compensation or benefits to which Employee becomes entitled under this agreement, or any agreement or plan referenced herein, in connection with Employee’s termination of employment with the Company constitute deferred compensation subject to Section 409A of the Code and (ii) Employee is deemed at the time of such termination of employment to be a “specified” employee under Section 409A of the Code, then such compensation or benefits shall not be made or commence until the earliest of (i) the expiration of the six (6)-month period measured from the date of Employee’s “separation from service” (as such term is at the time defined in Treasury Regulations under Section 409A of the Code with the Company; or (ii) the date of Employee’s death following such separation from service; provided, however, that such deferral shall only be effected to the extent required to avoid adverse tax treatment to Employee, including (without limitation) the additional twenty percent (20%) tax for which Employee would otherwise be liable under Section 409A(a)(1)(B) of the Code in the absence of such deferral. During any period compensation or benefits to Employee are deferred pursuant to the foregoing, Employee shall be entitled to interest on such deferral at a per annum rate equal to the highest rate of interest applicable to six (6)-month money market accounts offered by the following institutions: Citibank N.A., Wells Fargo Bank, N.A. or Bank of America, on the date of such “separation from service.” Upon the expiration of the applicable deferral period, any compensation or benefits which would have otherwise been paid during that period (whether in a single sum or in installments) in the absence of this paragraph shall be paid to Employee or Employee’s beneficiary in one lump sum.

(d) Any payment pursuant to this Section 4 shall be conditioned upon the Employee signing and not revoking a release in the form attached as Exhibit A (the “Release”) not later than 60 days after the Employee’s Separation from Service (such 60th day, the “Release Deadline”). The Employee shall not be entitled to such payment, and no payment shall be made to the Employee, until after the Release Deadline and subject to the Release having become effective on or prior to the Release Deadline. The Company shall furnish such Release to the Employee in connection with the Employee’s Separation from Service. If the Employee has signed the Release prior to the time the Company so furnishes such Release to the Employee, the Employee will be required to again sign and not revoke the Release in connection with the Employee’s Separation from Service in order to receive payments hereunder (as described above), and the prior signed Release shall be null and void.

5. **LIMITATION ON PAYMENTS**

In the event that the payments and other benefits provided for in this Agreement or otherwise payable to Employee (i) constitute “parachute payments” within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the “Code”) and (ii) would be subject to the excise tax imposed by Section 4999 of the Code (the “Excise Tax”), then Employee’s payments and benefits under this Agreement or
otherwise payable to Employee shall be either delivered in full (without the Company paying any portion of the Excise Tax), or delivered as to such lesser extent which would result in no portion of such payments and benefits being subject to the Excise Tax, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the Excise Tax, results in the receipt by Employee on an after-tax basis of the greatest amount of payments and benefits, notwithstanding that all or some portion of such payments and benefits may subject to the Excise Tax. Unless the Company and Employee otherwise agree in writing, any determination required under this Section 5 shall be made in writing by a nationally-recognized independent public accounting firm designated by agreement between Employee and Company (the “Accountants”), whose determination shall be conclusive and binding upon Employee and the Company for all purposes. For purposes of making the calculations required by this Section 5, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Section 280G and 4999 of the Code. The Company and Employee shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section 5.

Any reduction in payments and/or benefits required by this Section 5 shall occur in the following order as reasonably determined by the Accountants: (1) reduction of vesting acceleration of “out-of-the-money” stock options or stock appreciation rights, (2) reduction of cash payments; (3) reduction of non-cash/non-equity-based payments or benefits and (4) reduction of vesting acceleration of equity-based awards (other than “out-of-the-money” stock options or stock appreciation rights); provided, however, that any non-taxable payments or benefits shall be reduced last in accordance with the same categorical ordering rule. In the event items described in (2) or (3) are to be reduced, reduction shall occur in reverse chronological order such that the payment or benefit owed on the latest date following the occurrence of the event triggering the Excise Tax will be the first payment to be reduced (with reductions made pro-rata in the event payments are owed at the same time). In the event that acceleration of vesting of equity-based awards is to be reduced, such acceleration of vesting shall be cancelled in a manner such as to obtain the best economic benefit for Employee (with reductions made pro-rata if economically equivalent), as determined by the Accountants. In no event will Employee exercise any discretion with respect to the ordering of any reduction of payments or benefits pursuant to this Section 5.

6. GENERAL.

(a) Employee shall retain in confidence under the conditions of the Company’s confidentiality agreement with Employee any proprietary or other confidential information known to Employee concerning the Company and its business so long as such information is not publicly disclosed and disclosure is not required by an order of any governmental body or court. If required, Employee shall return to the Company any memoranda, documents or other materials proprietary to the Company.
(b) While employed by the Company and following the termination of such employment after a Change in Control for a period of two (2) years, Employee shall not, whether for Employee’s own account or for the account of any other individual, partnership, firm, corporation or other business organization, intentionally solicit, endeavor to entice away from the Company or a subsidiary of the Company (each, a “Protected Party”), or otherwise interfere with the relationship of a Protected Party with, any person who is employed by a Protected Party or any person or entity who is, or was within the then most recent twelve (12) month period, a customer or client of a Protected Party.

Employee acknowledges that a breach of any of the covenants contained in this Section 6(b) may result in material irreparable injury to the Company for which there is no adequate remedy at law, that it may not be possible to measure damages for such injuries precisely and that, in the event of such a breach, any payments remaining under the terms of this Agreement shall cease and the Company may be entitled to obtain a temporary restraining order and/or a preliminary or permanent injunction restraining Employee from engaging in activities prohibited by this Section 6(b) or such other relief as may be required to specifically enforce any of the covenants in this Section 6(b). Employee agrees to and hereby does submit to in personam jurisdiction before each and every such court in the State of California, County of Santa Clara, for that purpose. This Section 6(b) shall survive any termination of this Agreement.

(c) If litigation is brought by Employee to enforce or interpret any provision contained in this Agreement, the Company shall indemnify Employee for Employee’s reasonable attorney’s fees and disbursements incurred in such litigation and pay prejudgment interest on any money judgment obtained by Employee calculated at the prime rate of interest in effect from time to time at the Bank of America, San Francisco, from the date that payment should have been made under the Agreement, provided that Employee shall not have been found by the court in which such litigation is pending to have had no cause in bringing the action, or to have acted in bad faith, which finding must be final with the time to appeal therefrom having expired and no appeal having been taken. Any payment made pursuant to this Section 6(c) shall be made promptly and no later than the end of the calendar year in which such fees or disbursements were incurred or in which such judgment was obtained, as applicable.

(d) Except as provided in Section 4, the Company’s obligation to pay to Employee the compensation and to make the arrangements provided in this Agreement shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, any setoff, counterclaim, recoupment, defense or other right which the Company may have against Employee or anyone else. All amounts payable by the Company hereunder shall be paid without notice or demand. Subject to Section 4(a)(iv), Employee shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment.

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(e) The Company shall require any successor, whether direct or indirect, by purchase, merger, consolidation or otherwise, to all or substantially all of the business and/or assets of the Company, by written agreement to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place.

(f) This Agreement shall inure to the benefit of and be enforceable by Employee’s heirs, successors and assigns. If Employee should die while any amounts would still be payable to Employee hereunder if Employee had continued to live, all such amounts shall be paid in accordance with the terms of this Agreement to Employee’s heirs, successors and assigns.

(g) For the purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered mail, return receipt requested, postage prepaid, addressed as follows:

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<tr>
<th>If to Employee:</th>
<th>If to the Company:</th>
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<tbody>
<tr>
<td></td>
<td>Varian Medical Systems, Inc.</td>
</tr>
<tr>
<td></td>
<td>3100 Hansen Way</td>
</tr>
<tr>
<td></td>
<td>Palo Alto, CA 94304-1000</td>
</tr>
<tr>
<td></td>
<td>Attn: Vice President, Human Resources</td>
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or to such other address as either party furnishes to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

(h) This Agreement shall constitute the entire agreement between Employee and the Company concerning the subject matter of this Agreement.

(i) The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California without giving effect to the provisions, principles or policies thereof relating to choice or conflict of laws. The invalidity or unenforceability of any provision of this Agreement in any circumstance shall not affect the validity or enforceability of such provision in any other circumstance or the validity or enforceability of any other provision of this Agreement, and, except to the extent such provision is invalid or unenforceable, this Agreement shall remain in full force and effect. Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating or affecting the remaining provisions.
hereof in such jurisdiction, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. This Section 6(i) shall survive any termination of this Agreement.

(j) This Agreement may be amended or terminated by the Company pursuant to a resolution adopted by the Board at any time prior to a Potential Change in Control Date. After a Change in Control Date or a Potential Change in Control Date, this Agreement may only be amended or terminated in writing with the consent of Employee.

(k) No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement and this Agreement shall supersede all prior agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties acknowledge that they have read and understand the terms of this Agreement and have executed this Agreement to be effective as of

VARIAN MEDICAL SYSTEMS, INC.                        EMPLOYEE

By:                                                 [Name]
Title:

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CHANGE IN CONTROL AGREEMENT
FOR KEY EMPLOYEES

THIS CHANGE IN CONTROL AGREEMENT ("Agreement") is entered into effective as of by and between VARIAN MEDICAL SYSTEMS, INC., a Delaware corporation (the "Company") 1, and an employee of the Company or one of its subsidiaries ("Employee").

The Company’s Board of Directors (the “Board”) has determined that it is in the best interest of the Company and its stockholders for the Company to agree to pay Employee termination compensation in the event Employee should leave the employ of the Company under the circumstances described below. The Board recognizes that the possibility of a proposal from a third person, whether or not solicited by the Company, concerning a possible “Change in Control” of the Company (as such language is defined in Section 3(d)) will be unsettling to Employee. Therefore, the arrangements set forth in this Agreement are being made to help assure a continuing dedication by Employee to Employee’s duties to the Company notwithstanding the proposal or occurrence of a Change in Control. The Board believes it imperative, should the Company receive any proposal from a third party, that Employee, without being influenced by the uncertainties of Employee’s own situation, be able to assess and advise the Board whether such proposals are in the best interest of the Company and its stockholders, and to enable Employee to take action regarding such proposals as the Board might determine to be appropriate. The Board also wishes to demonstrate to key personnel that the Company desires to enhance management relations and its ability to retain and, if needed, to attract new management, and intends to ensure that loyal and dedicated management personnel are treated fairly.

In view of the foregoing, the Company and Employee agree as follows:

1. EFFECTIVE DATE AND TERM OF AGREEMENT.

This Agreement is effective and binding on the Company and Employee as of the date hereof; provided, however, that, subject to Section 2(d), the provisions of Sections 3 and 4 shall become operative only upon the Change in Control Date.

1 “Company” shall include the Company, any successor to the Company’s business and/or assets, and any party which executes and delivers the agreement required by Section 6(e) or which otherwise becomes bound by the terms and conditions of this Agreement by operation of law or otherwise.
2. EMPLOYMENT OF EMPLOYEE.
   (a) Except as provided in Sections 2(b), 2(c) and 2(d), nothing in this Agreement shall affect any right which Employee may otherwise have to terminate Employee’s employment, nor shall anything in this Agreement affect any right which the Company may have to terminate Employee’s employment at any time in any lawful manner.

   (b) In the event of a Potential Change in Control, to be eligible to receive the benefits provided by this Agreement, Employee will not voluntarily leave the employ of the Company, and will continue to perform Employee’s regular duties and the services specified in the recitals of this Agreement until the Change in Control Date. Should Employee voluntarily terminate employment prior to the Change in Control Date, this Agreement shall lapse upon such termination and be of no further force or effect.

   (c) If Employee’s employment terminates on or after the Change in Control Date as provided under Sections 3 and 4, the Company will provide to Employee the payments and benefits as provided in Sections 3 and 4.

   (d) If Employee’s employment is terminated by the Company without Cause prior to the Change in Control Date but on or after a Potential Change in Control Date, subject to Section 4(d), then the Company will provide to Employee the payments and benefits described in Sections 3 and 4 unless the Company reasonably demonstrates that Employee’s termination of employment neither (i) was at the request of a third party who has taken steps reasonably calculated to effect a Change in Control nor (ii) arose in connection with or in anticipation of a Change in Control. Such payments and benefits will be paid within five (5) business days following the 60th day after the Employee’s Separation from Service except that the stock option and restricted stock acceleration benefits described in Section 4(a)(iii) shall be provided on the Change in Control Date and accelerated restricted stock units outstanding on the date of this Agreement shall be settled on their originally scheduled vesting dates. In the event that a Change in Control is not consummated, Employee shall return to the Company any payments and benefits provided to the Employee under this Section 2(d).

3. TERMINATION FOLLOWING CHANGE IN CONTROL.
   (a) If a Change in Control shall have occurred, Employee shall be entitled to the benefits provided in Section 4 upon the subsequent termination of Employee’s employment within the applicable period set forth in Section 4 unless such termination is due to Employee’s death, Retirement or Disability or is for Cause or is effected by Employee other than for Good Reason (as such terms are defined in Section 3(d)).

   (b) If within eighteen (18) months after a Change in Control, Employee incurs a Separation from Service by reason of Employee’s death or Disability, Employee (or, if...
applicable, his or her estate) shall be entitled to death or long-term disability benefits from the Company no less favorable than the most favorable benefits to which Employee would have been entitled had the death or Disability occurred at any time during the period commencing one (1) year prior to the Change in Control. To the extent such benefits are taxable to Employee, the benefits provided during the calendar year shall not affect the benefits to be provided in any other calendar year and the benefits shall not be subject to liquidation or exchange for another benefit.

(c) If Employee’s employment shall be terminated by the Company for Cause or by Employee other than for Good Reason during the term of this Agreement, the Company shall pay Employee’s base salary through the date of termination at the rate in effect at the time notice of termination is given, and the Company shall have no further obligations to Employee under this Agreement.

(d) For purposes of this Agreement:

“Base Salary” shall mean the annual base salary paid to Employee immediately prior to a Change in Control, provided that such amount shall in no event be less than the annual base salary paid to Employee during the one (1) year period immediately prior to the Change in Control.

A “Change in Control” shall be deemed to have occurred if:

(i) Any individual or group constituting a “person”, as such term is used in Sections 13(d) and 14(d)(2) of the Exchange Act (other than (A) the Company or any of its subsidiaries or (B) any trustee or other fiduciary holding securities under an employee benefit plan of the Company or of any of its subsidiaries), is or becomes the beneficial owner, directly or indirectly, of securities of the Company representing thirty percent (30%) or more of the combined voting power of the Company’s outstanding securities then entitled ordinarily (and apart from rights accruing under special circumstances) to vote for the election of directors; or

(ii) Continuing Directors cease to constitute at least a majority of the Board; or

(iii) there occurs a reorganization, merger, consolidation or other corporate transaction involving the Company (a “Transaction”), in each case with respect to which the stockholders of the Company immediately prior to such Transaction do not, immediately after the Transaction, own more than 50% of the combined voting power of the Company or other corporation resulting from such Transaction; or

(iv) all or substantially all of the assets of the Company are sold, liquidated or distributed; provided, however, that a “Change in Control” shall not be
deemed to have occurred under this Agreement if, prior to the occurrence of a specified event that would otherwise constitute a Change in Control hereunder, the disinterested Continuing Directors then in office, by a majority vote thereof, determine that the occurrence of such specified event shall not be deemed to be a Change in Control with respect to Employee hereunder if the Change in Control results from actions or events in which Employee is a participant in a capacity other than solely as an officer, employee or director of the Company.

“Change in Control Date” shall mean the date on which a Change in Control occurs.

“Cause” shall mean:

(i) The continued willful failure of Employee to perform Employee’s duties to the Company (other than any such failure resulting from Employee’s incapacity due to physical or mental illness) after written notice thereof (specifying the particulars thereof in reasonable detail) and a reasonable opportunity to be heard and cure such failure are given to Employee by the Board or a committee thereof; or

(ii) The willful commission by Employee of a wrongful act that caused or was reasonably likely to cause substantial damage to the Company, or an act of fraud in the performance of Employee’s duties on behalf of the Company; or

(iii) The conviction of, or plea of nolo contendere by, Employee for commission of a felony in connection with the performance of Employee’s duties on behalf of the Company; or

(iv) The order of a federal or state regulatory authority having jurisdiction over the Company or its operations or by a court of competent jurisdiction requiring the termination of Employee’s employment by the Company.

“Continuing Directors” shall mean the directors of the Company in office on the date hereof and any successor to any such director who was nominated or selected by a majority of the Continuing Directors in office at the time of the director’s nomination or selection and who is not an “affiliate” or “associate” (as defined in Regulation 12B under the Exchange Act) of any person who is the beneficial owner, directly or indirectly, of securities representing ten percent (10%) or more of the combined voting power of the Company’s outstanding securities then entitled ordinarily to vote for the election of directors.

“Disability” shall mean Employee’s incapacity due to physical or mental illness such that Employee shall have become qualified to receive benefits under the Company’s long-term disability plan as in effect on the date of the Change in Control.
“Dispute” shall mean, in the case of termination of Employee’s employment for Disability or Cause, that Employee challenges the existence of Disability or Cause, and in the case of termination of Employee’s employment for Good Reason, that the Company challenges the existence of Good Reason for termination of Employee’s employment.


“Good Reason” shall mean:

(i) The assignment of Employee to duties which are materially different from Employee’s duties immediately prior to the Change in Control and which result in a material reduction in Employee’s authority and responsibility when compared to the highest level of authority and responsibility assigned to Employee at any time during the six (6) month period prior to the Change in Control Date; or

(ii) A reduction of Employee’s total compensation as the same may have been increased from time to time after the Change in Control Date other than (A) a reduction implemented with the consent of Employee or (B) a reduction that is generally comparable (proportionately) to compensation reductions imposed on key employees of the Company generally; or

(iii) The failure to provide to Employee the benefits and perquisites, including participation on a comparable basis in the Company’s stock option, incentive, and other similar plans in which employees of the Company of comparable title and salary grade participate, as were provided to Employee immediately prior to a Change in Control, or with a package of benefits and perquisites that are substantially comparable in all material respects to such benefits and perquisites provided prior to the Change in Control; or

(iv) The relocation of the office of the Company where Employee is providing Employee’s services to the Company immediately prior to the Change in Control Date (the “CIC Location”) to a location which is more than 50 miles away from the CIC Location or the Company’s requiring Employee to be based more than 50 miles away from the CIC Location (except for required travel on the Company’s business to an extent substantially consistent with Employee’s customary business travel obligations in the ordinary course of business prior to the Change in Control Date);

(v) The failure of the Company to obtain promptly upon any Change in Control the express written assumption of an agreement to perform this Agreement by any successor as contemplated in Section 6(e); or

(vi) The attempted termination of Employee’s employment for Cause on grounds insufficient to constitute a basis of termination for Cause under this Agreement; or
(vii) The failure of the Company to promptly make any payment into escrow when so required by Section 3(f).

Notwithstanding anything in this Agreement to the contrary, a termination for “Good Reason” shall not occur unless the Employee has provided written notice to the Company of the Employee’s intention to terminate employment and the specific reason(s) for such “Good Reason”. Following receipt of such written notice, the Company shall have the right, within fifteen (15) days of receiving such notice, to cure the circumstances giving rise to such “Good Reason”.

“Potential Change in Control” shall mean the earliest to occur of (a) the execution of an agreement or letter of intent, the consummation of the transactions described in which would result in a Change in Control, (b) the approval by the Board of a transaction or series of transactions, the consummation of which would result in a Change in Control, or (c) the public announcement of a tender offer for the Company’s voting stock, the completion of which would result in a Change in Control; provided, that no such event shall be a “Potential Change in Control” unless (i) in the case of any agreement or letter of intent described in clause (a), the transaction described therein is subsequently consummated by the Company and the other party or parties to such agreement or letter of intent and thereupon constitutes a “Change in Control”, (ii) in the case of any Board-approved transaction described in clause (b), the transaction so approved is subsequently consummated and thereupon constitutes a “Change in Control” or (iii) in the case of any tender offer described in clause (c), such tender offer is subsequently completed and such completion thereupon constitutes a “Change in Control”.

“Potential Change in Control Date” shall mean the date on which a Potential Change in Control occurs.

“Retirement” shall mean Employee’s actual retirement after reaching the normal or early retirement date provided for in the Company’s Retirement and Profit-Sharing Program as in effect on the date of Employee’s termination of employment.

“Separation from Service” shall have the meaning set forth in Section 409A of the Code.

(e) Any termination of employment by the Company or by Employee shall be communicated by written notice, specify the date of termination, state the specific basis for termination and set forth in reasonable detail the facts and circumstances of the termination in order to provide a basis for determining the entitlement to any payments under this Agreement.
(f) If within thirty (30) days after notice of termination is given, the party to whom the notice was given notifies the other party that a Dispute exists, the parties will promptly pursue resolution of such Dispute with reasonable diligence; provided, however, that pending resolution of any such Dispute, the Company shall pay 75% of any amounts which would otherwise be due Employee pursuant to Section 4 if such Dispute did not exist into escrow pending resolution of such Dispute and pay 25% of such amounts to Employee. Employee agrees to return to the Company any such amounts to which it is ultimately determined that he is not entitled. If, following a final, nonappealable determination that Employee is not entitled to retain all or any portion of this amount, Employee fails to return such excess amount, then Employee shall be required to pay the full costs of recovering such amount. Any escrowed amounts that are released shall otherwise be paid as required under this Agreement and, in no case, later than the end of the calendar year in which the Company and Employee enter into a legally binding settlement of such dispute, the Company concedes the amount is payable, or the Company is required to make such payment pursuant to a final and nonappealable judgment or other binding decision.

4. PAYMENTS AND BENEFITS UPON TERMINATION.

(a) If within eighteen (18) months after a Change in Control, the Company terminates Employee’s employment other than by reason of Employee’s death, Disability, Retirement or for Cause, or if Employee terminates Employee’s employment for Good Reason, then the Employee shall be entitled to the following payments and benefits following Employee’s Separation from Service:

(i) The Company shall pay to Employee as compensation for services rendered, no later than five (5) business days following the Release Deadline, a lump sum severance payment equal to 2.00 multiplied by the sum of: (A) Employee’s Base Salary; and (B) the greater of (x) the Employee’s most recently established target annual bonus under the Company’s Management Incentive Plan (the “MIP”) and (y) the average annual bonus that was paid to Employee in the three (3) fiscal years ending prior to the date of termination under the MIP. Notwithstanding the foregoing, if Employee has not completed at least three (3) full fiscal years of service with the Company prior to Employee’s termination date, then the amount determined in (y) above, shall be based on the average annual bonus for the number of full fiscal years Employee has completed.

(ii) The Company shall pay to Employee as compensation for services rendered, no later than five (5) business days following the Release Deadline, a lump sum payment equal to a pro rata portion (based on the number of days elapsed during the fiscal year and/or other bonus performance period in which the termination occurs) of Employee’s target bonus under the MIP for the fiscal year and for any other partially completed bonus performance period in which the termination occurs.
(iii) All waiting periods for the exercise of any stock options granted to Employee and all conditions or restrictions of any restricted stock granted to Employee shall terminate, and all such options shall be exercisable in full according to their terms, and the restricted stock shall be transferred to Employee as soon as reasonably practicable thereafter. In addition, all conditions or restrictions of any restricted stock units granted to Employee shall terminate, and the stock underlying such units shall be transferred to Employee (x) within five (5) business days following the Release Deadline with respect to awards granted after the date of this Agreement or (y) on the originally scheduled vesting dates for awards outstanding on the date of this Agreement.

(iv) Employee’s participation as of the date of termination in the life, medical/dental/vision and disability insurance plans and financial/tax counseling plan of the Company shall be continued on the same terms (including any cost sharing) as if Employee were an employee of the Company (or equivalent benefits provided) until the earlier of Employee’s commencement of substantially equivalent full-time employment with a new employer or twenty-four (24) months after the date of his or her Separation from Service; provided, however, that after the date of his or her Separation from Service, Employee shall no longer be entitled to receive Company-paid executive physicals or, upon expiration of the applicable memberships, Company-paid airline memberships. In the event Employee shall die before the expiration of the period during which the Company is required to continue Employee’s participation in such insurance plans, the participation of Employee’s surviving spouse and family in the Company’s insurance plans shall continue throughout such period.

Notwithstanding the foregoing, to the extent any of the foregoing benefits are not exempt from Section 409A of the Code, such benefits provided under this Section 4(a)(iv) during any calendar year shall not affect such benefits to be provided in any other calendar year and the right to such benefits shall not be subject to liquidation or exchange for another benefit. In addition, the premiums for any medical coverage provided through a self-insured plan under this Section 4(a)(iv) shall be taxable to Employee to the extent required to avoid the taxes imposed by Section 105(h) and Section 409A of the Code. To the extent any of the foregoing benefits are not exempt from Section 409A of the Code and are subject to the delay described in Section 4(c) hereof, except as would constitute a violation of Section 409A of the Code, Employee shall have the right to pay for and obtain such benefits during such delay period and shall be reimbursed by the Company for any such payments upon expiration of such delay period.

(v) Employee may elect within 90 days after his or her Separation from Service to purchase any automobile then in the possession of Employee and subject to a lease of which the Company is the lessor by payment to the Company of the residual value set forth in the lease, without any increase for remaining lease payments during the term or other lease breakage costs.
(vi) All payments and benefits provided under this Agreement shall be subject to applicable tax withholding.

(b) Following Employee’s termination of employment for any reason, the Company shall have the unconditional right to reduce any payments owed to Employee hereunder by the amount of any due and unpaid principal and interest on any loans by the Company to Employee and Employee hereby agrees and consents to such right on the part of the Company. Any loan offset made under this Section 4(b) shall be made at the same time the payments reduced hereunder would have otherwise been made and otherwise in a manner that would not result in the imposition of taxes to Employee under Section 409A of the Code. If it is not possible to make such offset without the imposition of taxes to Employee under Section 409A of the Code, such offset shall not be made.

(c) In the event this Agreement or any compensation or benefit paid to Employee hereunder is deemed to be subject to Section 409A of the Code, Employee and the Company agree to negotiate in good faith to adopt such amendments that are necessary to comply with Section 409A of the Code or to exempt such compensation or benefits from Section 409A. In addition, to the extent (i) any compensation or benefits to which Employee becomes entitled under this agreement, or any agreement or plan referenced herein, in connection with Employee’s termination of employment with the Company constitute deferred compensation subject to Section 409A of the Code and (ii) Employee is deemed at the time of such termination of employment to be a “specified” employee under Section 409A of the Code, then such compensation or benefits shall not be made or commence until the earliest of (i) the expiration of the six (6)-month period measured from the date of Employee’s “separation from service” (as such term is at the time defined in Treasury Regulations under Section 409A of the Code with the Company; or (ii) the date of Employee’s death following such separation from service; provided, however, that such deferral shall only be effected to the extent required to avoid adverse tax treatment to Employee, including (without limitation) the additional twenty percent (20%) tax for which Employee would otherwise be liable under Section 409A(a)(1)(B) of the Code in the absence of such deferral. During any period compensation or benefits to Employee are deferred pursuant to the foregoing, Employee shall be entitled to interest on such deferral at a per annum rate equal to the highest rate of interest applicable to six (6)-month money market accounts offered by the following institutions: Citibank N.A., Wells Fargo Bank, N.A. or Bank of America, on the date of such “separation from service.” Upon the expiration of the applicable deferral period, any compensation or benefits which would have otherwise been paid during that period (whether in a single sum or in installments) in the absence of this paragraph shall be paid to Employee or Employee’s beneficiary in one lump sum.

(d) Any payment pursuant to this Section 4 shall be conditioned upon the Employee signing and not revoking a release in the form attached as Exhibit A (the “Release”) not later than 60 days after the Employee’s Separation from Service (such
60th day, the “Release Deadline”). The Employee shall not be entitled to such payment, and no payment shall be made to the Employee, until after the Release Deadline and subject to the Release having become effective on or prior to the Release Deadline. The Company shall furnish such Release to the Employee in connection with the Employee’s Separation from Service. If the Employee has signed the Release prior to the time the Company so furnishes such Release to the Employee, the Employee will be required to again sign and not revoke the Release in connection with the Employee’s Separation from Service in order to receive payments hereunder (as described above), and the prior signed Release shall be null and void.

5. LIMITATION ON PAYMENTS

In the event that the payments and other benefits provided for in this Agreement or otherwise payable to Employee (i) constitute “parachute payments” within the meaning of Section 280G of the Internal Revenue Code of 1986, as amended (the “Code”) and (ii) would be subject to the excise tax imposed by Section 4999 of the Code (the “Excise Tax”), then Employee’s payments and benefits under this Agreement or otherwise payable to Employee shall be either delivered in full (without the Company paying any portion of the Excise Tax), or delivered as to such lesser extent which would result in no portion of such payments and benefits being subject to the Excise Tax, whichever of the foregoing amounts, taking into account the applicable federal, state and local income taxes and the Excise Tax, results in the receipt by Employee on an after-tax basis of the greatest amount of payments and benefits, notwithstanding that all or some portion of such payments and benefits may subject to the Excise Tax. Unless the Company and Employee otherwise agree in writing, any determination required under this Section 5 shall be made in writing by a nationally-recognized independent public accounting firm designated by agreement between Employee and Company (the “Accountants”), whose determination shall be conclusive and binding upon Employee and the Company for all purposes. For purposes of making the calculations required by this Section 5, the Accountants may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Section 280G and 4999 of the Code. The Company and Employee shall furnish to the Accountants such information and documents as the Accountants may reasonably request in order to make a determination under this Section 5.

Any reduction in payments and/or benefits required by this Section 5 shall occur in the following order as reasonably determined by the Accountants: (1) reduction of vesting acceleration of “out-of-the-money” stock options or stock appreciation rights, (2) reduction of cash payments; (3) reduction of non-cash/non-equity-based payments or benefits and (4) reduction of vesting acceleration of equity-based awards (other than “out-of-the-money” stock options or stock appreciation rights); provided, however, that any non-taxable payments or benefits shall be reduced last in accordance with the
same categorical ordering rule. In the event items described in (2) or (3) are to be reduced, reduction shall occur in reverse chronological order such that the payment or benefit owed on the latest date following the occurrence of the event triggering the Excise Tax will be the first payment to be reduced (with reductions made pro-rata in the event payments are owed at the same time). In the event that acceleration of vesting of equity-based awards is to be reduced, such acceleration of vesting shall be cancelled in a manner such as to obtain the best economic benefit for Employee (with reductions made pro-rata if economically equivalent), as determined by the Accountants. In no event will Employee exercise any discretion with respect to the ordering of any reduction of payments or benefits pursuant to this Section 5.

6. GENERAL.

(a) Employee shall retain in confidence under the conditions of the Company’s confidentiality agreement with Employee any proprietary or other confidential information known to Employee concerning the Company and its business so long as such information is not publicly disclosed and disclosure is not required by an order of any governmental body or court. If required, Employee shall return to the Company any memoranda, documents or other materials proprietary to the Company.

(b) While employed by the Company and following the termination of such employment after a Change in Control for a period of two (2) years, Employee shall not, whether for Employee’s own account or for the account of any other individual, partnership, firm, corporation or other business organization, intentionally solicit, endeavor to entice away from the Company or a subsidiary of the Company (each, a “Protected Party”), or otherwise interfere with the relationship of a Protected Party with, any person who is employed by a Protected Party or any person or entity who is, or was within the then most recent twelve (12) month period, a customer or client of a Protected Party.

Employee acknowledges that a breach of any of the covenants contained in this Section 6(b) may result in material irreparable injury to the Company for which there is no adequate remedy at law, that it may not be possible to measure damages for such injuries precisely and that, in the event of such a breach, any payments remaining under the terms of this Agreement shall cease and the Company may be entitled to obtain a temporary restraining order and/or a preliminary or permanent injunction restraining Employee from engaging in activities prohibited by this Section 6(b) or such other relief as may be required to specifically enforce any of the covenants in this Section 6(b). Employee agrees to and hereby does submit to in personam jurisdiction before each and every such court in the State of California, County of Santa Clara, for that purpose. This Section 6(b) shall survive any termination of this Agreement.

(c) If litigation is brought by Employee to enforce or interpret any provision contained in this Agreement, the Company shall indemnify Employee for Employee’s
reasonable attorney’s fees and disbursements incurred in such litigation and pay prejudgment interest on any money judgment obtained by Employee calculated at the prime rate of interest in effect from time to time at the Bank of America, San Francisco, from the date that payment should have been made under the Agreement, provided that Employee shall not have been found by the court in which such litigation is pending to have had no cause in bringing the action, or to have acted in bad faith, which finding must be final with the time to appeal therefrom having expired and no appeal having been taken. Any payment made pursuant to this Section 6(c) shall be made promptly and no later than the end of the calendar year in which such fees or disbursements were incurred or in which such judgment was obtained, as applicable.

(d) Except as provided in Section 4, the Company’s obligation to pay to Employee the compensation and to make the arrangements provided in this Agreement shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, any setoff, counterclaim, recoupment, defense or other right which the Company may have against Employee or anyone else. All amounts payable by the Company hereunder shall be paid without notice or demand. Subject to Section 4(a)(iv), Employee shall not be required to mitigate the amount of any payment provided for in this Agreement by seeking other employment.

(e) The Company shall require any successor, whether direct or indirect, by purchase, merger, consolidation or otherwise, to all or substantially all of the business and/or assets of the Company, by written agreement to expressly assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place.

(f) This Agreement shall inure to the benefit of and be enforceable by Employee’s heirs, successors and assigns. If Employee should die while any amounts would still be payable to Employee hereunder if Employee had continued to live, all such amounts shall be paid in accordance with the terms of this Agreement to Employee’s heirs, successors and assigns.

(g) For the purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States registered mail, return receipt requested, postage prepaid, addressed as follows:

If to Employee:  
Varian Medical Systems, Inc.  
3100 Hansen Way  
Palo Alto, CA 94304-1000  
Attn: Vice President, Human Resources

If to the Company:  


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or to such other address as either party furnishes to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

(h) This Agreement shall constitute the entire agreement between Employee and the Company concerning the subject matter of this Agreement.

(i) The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California without giving effect to the provisions, principles or policies thereof relating to choice or conflict of laws. The invalidity or unenforceability of any provision of this Agreement in any circumstance shall not affect the validity or enforceability of such provision in any other circumstance or the validity or enforceability of any other provision of this Agreement, and, except to the extent such provision is invalid or unenforceable, this Agreement shall remain in full force and effect. Any provision in this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating or affecting the remaining provisions hereof in such jurisdiction, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. This Section 6(i) shall survive any termination of this Agreement.

(j) This Agreement may be amended or terminated by the Company pursuant to a resolution adopted by the Board at any time prior to a Potential Change in Control Date. After a Change in Control Date or a Potential Change in Control Date, this Agreement may only be amended or terminated in writing with the consent of Employee.

(k) No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement and this Agreement shall supersede all prior agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties acknowledge that they have read and understand the terms of this Agreement and have executed this Agreement to be effective as of .

VARIAN MEDICAL SYSTEMS, INC. 

EMPLOYEE

By: 
Title: 

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Description of Certain Compensatory Arrangements

Executive Compensation

Varian Medical Systems, Inc. (the “Company”) does not have a written employment agreement with any of its named executive officers (determined by reference to the Company’s proxy statement dated December 29, 2010). The annual base salary for calendar year 2012 for each of the Company’s Principal Executive Officer, Principal Financial Officer, and the other named executive officers is as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Base Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Timothy E. Guertin, Corporate President and Chief Executive Officer</td>
<td>$952,711</td>
</tr>
<tr>
<td>Dow R. Wilson, Corporate Executive Vice President and Chief Operating Officer</td>
<td>$693,264</td>
</tr>
<tr>
<td>Elisha W. Finney, Corporate Senior Vice President, Finance and Chief Financial Officer</td>
<td>$557,024</td>
</tr>
<tr>
<td>Robert H. Kluge, Corporate Senior Vice President and President, X-ray Products</td>
<td>$437,091</td>
</tr>
<tr>
<td>John W. Kuo, Corporate Vice President, General Counsel and Corporate Secretary</td>
<td>$400,987</td>
</tr>
</tbody>
</table>

On November 15, 2011, the Compensation and Management Development Committee (the “Compensation Committee”) set the performance goals for fiscal year 2012 under the Company’s Management Incentive Plan ("MIP") for the named executive officers and certain other executives. The annual cash incentives under the MIP for the Company’s Section 16 executives (including the named executive officers) are intended to comply with the exception for performance-based compensation under Section 162(m) of the Internal Revenue Code. For fiscal year 2012, the Compensation Committee established a pool of funds equal to one and one-quarter percent (1.25%) of the Company’s fiscal year 2012 earnings before interest and taxes (“EBIT”) results (the “MIP Bonus Pool”) to be available for annual cash incentives under the MIP to this group. The Compensation Committee has discretion to pay each of these executives less than their corresponding share of the MIP Bonus Pool. Such discretion shall be exercised by the Compensation Committee based on the achievement of the following performance goals in fiscal year 2012 over fiscal year 2011 and any other factors determined by the Compensation Committee in its sole discretion. In the case of Mr. Guertin, Ms. Finney, Mr. Wilson and Mr. Kuo, payments under the MIP will be based 40% on EBIT growth for the Company as a whole, 20% on revenue growth for the Company as a whole, 20% on net orders growth for the Company as a whole, and 20% on the executive’s individual performance and such other factors determined by the Compensation Committee in its sole discretion. In the case of Mr. Kluge, payment under the MIP will be based 20% on EBIT growth for the Company as a whole, 10% on revenue growth for the Company as a whole, 10% on net orders growth for the Company as a whole, 20% on EBIT growth for the X-ray Products business segment, 10% on revenue growth for the X-ray Products business segment, 10% on net orders growth for the X-ray Products business segment, and 20% on his individual performance and such other factors determined by the Compensation Committee in its sole discretion. Payment under the MIP to the named executive officers may vary from $0 to the maximum of the lesser of two times the target participation.
level or a specified percentage of the MIP Bonus Pool based upon achievement under the performance goals described above.

Set forth below are payout levels for each executive if the target and maximum levels under the MIP are achieved:

<table>
<thead>
<tr>
<th>Name</th>
<th>Target As a % of base salary</th>
<th>Maximum (the lesser of the following) As a % of base salary</th>
<th>As a % of MIP Bonus Pool</th>
</tr>
</thead>
<tbody>
<tr>
<td>Timothy E. Guertin</td>
<td>115%</td>
<td>230%</td>
<td>34%</td>
</tr>
<tr>
<td>Elisha W. Finney</td>
<td>80%</td>
<td>160%</td>
<td>14%</td>
</tr>
<tr>
<td>Dow R. Wilson</td>
<td>85%</td>
<td>170%</td>
<td>18%</td>
</tr>
<tr>
<td>Robert H. Kluge</td>
<td>65%</td>
<td>130%</td>
<td>9%</td>
</tr>
<tr>
<td>John W. Kuo</td>
<td>60%</td>
<td>120%</td>
<td>8%</td>
</tr>
</tbody>
</table>

These executive officers have also been extended certain perquisites, such as use of a leased automobile under the Company’s Executive Car Program. Under the Executive Car Program, the Company provides a leased vehicle costing up to $82,000 for the Chief Executive Officer and leased vehicles costing up to $68,000 for the other named executive officers. Insurance, maintenance expenses and fuel costs are also included in the Executive Car Program. Participants have an option to purchase the car at the end of its three-year lease period or upon retirement at the lower of its depreciated book value or its fair market value (based on the Kelley Blue Book Auto Market Report wholesale value).

The Company does not permit its executives to use the Company’s fractionally owned aircraft for purely personal trips. However, the Company allows and includes in an executive’s compensation, as applicable, aircraft use attributable to permitted spousal use of the fractionally owned aircraft for business purposes and spousal travel on commercial airplanes deemed valuable and appropriate for business purposes.

The Company reimburses executive officers and non-executive officers for financial planning, estate planning, tax planning, tax return preparation and financial counseling services (to a maximum of $6,500 per year and unlimited for the Chief Executive Officer). The Company also reimburses certain individuals, including all executive officers and non-executive officers, for annual medical examinations (up to a maximum of $4,000 per year).

Additionally, for the benefit of the executives, the Company also provides a Company supplemental contribution match representing retirement contributions which could not be contributed to the executives’ qualified retirement accounts due to Internal Revenue Code limitations. The Company also permits executives to participate in the Company’s Deferred Compensation Plan, under which they may defer up to 50% of their base salaries and up to 100% of their cash incentives, and in compensation and benefit programs generally available to all other U.S. employees, such as the Company’s Employee Incentive Plan, Employee Stock Purchase Plan, 401(k) Retirement Program and supplemental life and disability insurance programs.

Compensation of Directors

Annual Cash Compensation. Each non-employee director receives an annual retainer of $45,000, except that the lead director receives an annual retainer of $60,000, or in the case of a new director or lead director a pro-rata portion thereof. The chairs of the Compensation and Management Development Committee and the Nominating and Corporate Governance Committee also receive an additional $10,000
annual retainer for serving in these positions, and the chair of the Audit Committee receives an additional $15,000. Each non-employee director also receives $2,000 for each Board meeting attended ($1,000 if the Board meeting was an in-person meeting and the director attended by telephone or video conference), and $1,500 for each committee meeting attended ($750 if the committee meeting was an in-person meeting and the director attended by telephone or video conference). Directors who are employees receive no compensation for their services as directors. All directors, however, receive reimbursement for out-of-pocket expenses of the directors’ associated with attending Board and committee meetings and for expenses related to directors’ continuing education programs. Non-employee directors may elect to receive cash compensation as full-value shares of the Company’s common stock, at a value equal to the fair market value of the Company’s common stock on the date that the foregone cash compensation otherwise would have been paid. Directors may alternatively elect to defer their retainer and/or meeting fees under the Company’s Deferred Compensation Plan, subject to the restrictions of applicable tax laws.

Equity Compensation. New non-employee directors do not receive initial equity awards, but each continuing non-employee director receives an annual grant of non-qualified stock options to purchase 5,000 shares of common stock at an exercise price equal to the fair market value (i.e., the closing price) of the underlying shares of the Company’s common stock on the date of grant and an annual grant of Deferred Stock Units having a fair market value on the date of grant of $100,000, based on the fair market value of the Company’s common stock on the date of grant (typically the date after the Company’s annual meeting of stockholders).

Compensation for Levy as a Non-Executive Employee

In his role as a non-executive employee of the Company (and in addition to his responsibilities as Chairman of the Board), Dr. Levy provides on-going advice and counsel to the management of the Company on strategic business and technological matters, and is involved with investor groups and key customers. In connection with this non-executive employee role, Dr. Levy receives the following compensation:

- base salary of $160,000;
- provision of a leased office space;
- provision of an administrator; and
- eligibility for the Corporation’s non-executive employee health and welfare benefit plans, subject to his election and contributions towards those benefit plans, as well as the Employee Incentive Plan.

Dr. Levy is not eligible to participate in the Company’s Management Incentive Plan and in any executive perquisite programs, including the Executive Car Program and reimbursement for executive physicals. He is also not eligible for equity awards, paid personal leave accrual or for any supplemental retirement contributions in excess of the Company’s matching contributions under the Varian Medical Systems, Inc. Retirement Plan (the Company’s 401(k) Plan). He does not receive any separate compensation for his duties serving on the Board but receives the same reimbursement of expenses as do all other directors.
February 23, 2011

To: Varian Medical Systems, Inc.
3100 Hansen Way
Palo Alto, CA 94304-1038
Attn: Franco Palomba
Telephone: 650-424-5955
Facsimile: 650-842-5080

From: Bank of America, N.A.
c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated
Bank of America Tower at One Bryant Park
New York, NY 10036
Attn: John Servidio
Telephone: 646-855-7127
Facsimile: 704-208-2869

Re: Issuer Forward Repurchase Transaction
(Transaction Reference Number: 118146762)

Ladies and Gentlemen:

The purpose of this communication (this “Confirmation”) is to confirm the terms and conditions of the Transaction entered into between Bank of America, N.A. (“BofA”) and Varian Medical Systems, Inc. (“Counterparty”) on the Trade Date specified below (the “Transaction”). The terms of the Transaction shall be set forth in this Confirmation. This Confirmation shall constitute a “Confirmation” as referred to in the ISDA Master Agreement specified below.

1. This Confirmation is subject to, and incorporates, the definitions and provisions of the 2000 ISDA Definitions (including the Annex thereto) (the “2000 Definitions”) and the definitions and provisions of the 2002 ISDA Equity Derivatives Definitions (the “Equity Definitions”), and together with the 2000 Definitions, the “Definitions”), in each case as published by the International Swaps and Derivatives Association, Inc. (“ISDA”). In the event of any inconsistency between the 2000 Definitions and the Equity Definitions, the Equity Definitions will govern.

This Confirmation evidences a complete and binding agreement between BofA and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall be subject to an agreement (the “Agreement”) in the form of the 2002 ISDA Master Agreement (the “ISDA Form”) as if BofA and Counterparty had executed an agreement in such form (without any Schedule but with the elections set forth in this Confirmation). The Transaction shall be the only Transaction under the Agreement.

All provisions contained in, or incorporated by reference to, the Agreement will govern this Confirmation except as expressly modified herein. In the event of any inconsistency between this Confirmation and either the Definitions or the Agreement, this Confirmation shall govern. The Transaction is a Share Forward Transaction within the meaning set forth in the Equity Definitions.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date: February 23, 2011
Seller: BofA
Buyer: Counterparty
Shares: The common stock of Counterparty, par value USD 1.00 per share (Ticker Symbol: “VAR”)
Prepayment: Applicable
Prepayment Amount: As provided in Annex B to this Confirmation.
Prepayment Date: The first Exchange Business Day following the Trade Date
Exchange: The New York Stock Exchange
Related Exchange(s): All Exchanges
Calculation Agent: Bank of America, N.A.

Valuation Terms:
Averaging Dates: Each of the consecutive Exchange Business Days commencing on, and including, the fifth Exchange Business Day immediately following the Trade Date and ending on, and including, the Final Averaging Date.
Final Averaging Date: The Scheduled Final Averaging Date; provided that BofA shall have the right, in its absolute discretion, at any time to accelerate the Final Averaging Date to any date that is on or after the Scheduled Earliest Acceleration Date by written notice to Counterparty no later than 7:00 P.M., New York City time, on the Exchange Business Day immediately following the accelerated Final Averaging Date.
Scheduled Final Averaging Date: As provided in Annex B to this Confirmation; provided that the Scheduled Final Averaging Date shall be postponed by one Exchange Business Day for each Knock-out Day.
Scheduled Earliest Acceleration Date: As provided in Annex B to this Confirmation.
Valuation Date: The Final Averaging Date.
Knock-out Day: An Averaging Date (i) for which the VWAP Price exceeds the Knock-out Level and (ii) that is not a Disrupted Day in full; provided that there may be no more than the Maximum Number of Knock-out Days in the period commencing on, and including, the fifth Exchange Business Day immediately following the Trade Date and ending on, and including, the Final Averaging Date and, accordingly, once the Maximum Number of Knock-out Days is reached, no more Exchange Business Days in such period shall be Knock-out Days.
Knock-out Level: As provided in Annex B to this Confirmation.
Maximum Number of Knock-out Days: As provided in Annex B to this Confirmation.
Settlement Terms: Modified Postponement, provided that notwithstanding anything to the contrary in the Equity Definitions, if a Market Disruption Event occurs on any Averaging Date, the Calculation Agent may, in its good faith and commercially reasonable discretion, and if appropriate in light of market conditions, regulatory considerations or otherwise, take any or all of the following actions: (i) postpone the Scheduled Final Averaging Date in accordance with Modified Postponement (as modified herein) and/or (ii) determine that such Averaging Date is a Disrupted Day only in part, in which case the Calculation Agent shall (x) determine the VWAP Price for such Disrupted Day based on Rule 10b-18 eligible transactions in the Shares on such Disrupted Day taking into account the nature and duration of such Market Disruption Event and (y) determine the Settlement Price based on an appropriately weighted average instead of the arithmetic average described under “Settlement Price” below. Any adjustment to the Settlement Price will be made in good faith and in a commercially reasonable manner by the Calculation Agent and will be based on, among other factors, the duration of any Market Disruption Event and the volume, historical trading patterns and price of the Shares. Any Exchange Business Day on which, as of the date hereof, the Exchange is scheduled to close prior to its normal close of trading shall be deemed not to be an Exchange Business Day; if a closure of the Exchange prior to its normal close of trading on any Exchange Business Day is scheduled following the date hereof, then such Exchange Business Day shall be deemed to be a Disrupted Day in full. Section 6.6(a) of the Equity Definitions is hereby amended by replacing the word “shall” in the fifth line thereof with the word “may,” and by deleting clause (i) thereof, and Section 6.7(c)(iii)(A) of the Equity Definitions is hereby amended by replacing the word “shall” in the sixth and eighth line thereof with the word “may.”

Market Disruption Events: Section 6.3(a) of the Equity Definitions is hereby amended (A) by replacing the words “during the one hour period that ends at the relevant Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out Valuation Time, as the case may be” with “on any Scheduled Trading Day during the Settlement Valuation Period” in clause (ii) thereof, and (B) by replacing the words “or (iii) an Early Closure.” therein with “(iii) an Early Closure, or (iv) a Regulatory Disruption.”

Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term “Scheduled Closing Time” in the fourth line thereof.

Regulatory Disruption: Any event that BoA, in its good faith and commercially reasonable discretion, determines makes it appropriate with regard to any legal, regulatory or self-regulatory requirements or related policies and procedures for BoA to refrain from or decrease any market activity in connection with the Transaction. BoA shall notify Counterparty as soon as reasonably practicable that a Regulatory Disruption has occurred and the Averaging Dates affected by it.

Settlement Terms:

Initial Share Delivery: On the Initial Share Delivery Date, BoA shall deliver to Counterparty the Initial Shares.

Initial Share Delivery Date: The first Exchange Business Day following the Trade Date.

Initial Shares: As provided in Annex B to this Confirmation.

Settlement Date: If the Number of Shares to be Delivered is positive, the date that falls one Settlement Cycle following the Valuation Date.

Settlement: On the Settlement Date, BoA shall deliver to Counterparty the Number of Shares to be Delivered, if a positive number. If the Number of Shares to be Delivered is a negative number, the Counterparty Settlement Provisions in Annex A shall apply.
Number of Shares to be Delivered: A number of Shares equal to (a) the Prepayment Amount divided by (b) (i) the Settlement Price minus (ii) the Discount; provided that the Number of Shares to be Delivered as so determined shall be reduced by the number of Shares delivered on the Initial Share Delivery Date.

Settlement Price: The arithmetic average of the VWAP Prices for all Averaging Dates; provided that any Averaging Date that is a Knock-out Day shall be deemed not to be an Averaging Date for purposes of calculating the Settlement Price.

VWAP Price: For any Averaging Date, the Rule 10b-18 dollar volume weighted average price per Share for such day based on transactions executed during such day, as reported on Bloomberg Page “VAR.N <Equity> AQR SEC” (or any successor thereto) or, in the event such price is not so reported on such day for any reason or is manifestly incorrect, as reasonably determined by the Calculation Agent using a volume weighted method.

Discount: As provided in Annex B to this Confirmation.

Excess Dividend Amount: For the avoidance of doubt, all references to the Excess Dividend Amount in Section 9.2(a)(iii) of the Equity Definitions shall be deleted.

Other Applicable Provisions: To the extent either party is obligated to deliver Shares hereunder, the provisions of the last sentence of Section 9.2 and Sections 9.8, 9.9, 9.10, 9.11 (except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws arising as a result of the fact that Counterparty is the Issuer of the Shares) and 9.12 of the Equity Definitions will be applicable as if “Physical Settlement” applied to the Transaction.

Dividends:

Dividend: Any dividend or distribution on the Shares other than any dividend or distribution of the type described in Sections 11.2(e)(i), 11.2(e)(ii)(A) or 11.2(e)(ii)(B) of the Equity Definitions.

Share Adjustments:

Method of Adjustment: Calculation Agent Adjustment; provided that the declaration or payment of Dividends shall not be a Potential Adjustment Event.

It shall constitute an additional Potential Adjustment Event if the Scheduled Final Averaging Date is postponed pursuant to “Averaging Date Disruption” above, in which case the Calculation Agent may, in its good faith and commercially reasonable discretion, adjust any relevant terms of the Transaction as the Calculation Agent determines appropriate to account for the economic effect on the Transaction of such postponement, based on stock price, stock price volatility, interest rates, strike price, stock loan rate, liquidity and Averaging Dates.

Extraordinary Events:

Consequences of Merger Events: Modified Calculation Agent Adjustment

(a) Share-for-Share:
(b) Share-for-Other: Cancellation and Payment
(c) Share-for-Combined: Component Adjustment
Tender Offer: Applicable

Consequences of Tender Offers:

(a) Share-for-Share: Modified Calculation Agent Adjustment
(b) Share-for-Other: Modified Calculation Agent Adjustment
(c) Share-for-Combined: Modified Calculation Agent Adjustment

Composition of Combined Consideration:
Not Applicable

Consequences of Announcement Events:
Modified Calculation Agent Adjustment as set forth in Section 12.3(d) of the Equity Definitions; provided that references to “Tender Offer” shall be replaced by references to “Announcement Event” and references to “Tender Offer Date” shall be replaced by references to “Announcement Date.” An Announcement Event shall be an “Extraordinary Event” for purposes of the Equity Definitions, to which Article 12 of the Equity Definitions is applicable.

Announcement Event:
The occurrence of an Announcement Date in respect of a potential Acquisition Transaction (as defined in Section 9 below).

Announcement Date:
The date of the first public announcement in relation to an Acquisition Transaction, or any publicly announced change or amendment to the announcement giving rise to an Announcement Date.

Provisions applicable to Merger Events and Tender Offers:
The consequences set forth opposite “Consequences of Merger Events” and “Consequences of Tender Offers” above shall apply regardless of whether a particular Merger Event or Tender Offer relates to an Announcement Date for which an adjustment has been made pursuant to Consequences of Announcement Events, without duplication of any such adjustment.

New Shares:
In the definition of New Shares in Section 12.1(i) of the Equity Definitions, the text in clause (i) thereof shall be deleted in its entirety (including the word “and” following such clause (i)) and replaced with “publicly quoted, traded or listed on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)”.

Nationalization, Insolvency or Delisting:
Cancellation and Payment (Calculation Agent Determination); provided that in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it shall also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The NASDAQ Global Market or The NASDAQ Global Select Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange.
Additional Disruption Events:
- Change in Law: Applicable
- Failure to Deliver: Applicable
- Insolvency Filing: Applicable
- Hedging Disruption: Applicable
- Increased Cost of Hedging: Applicable
- Loss of Stock Borrow: Applicable
  - Maximum Stock Loan Rate: As provided in Annex B to this Confirmation.
  - Increased Cost of Stock Borrow: Applicable
  - Initial Stock Loan Rate: As provided in Annex B to this Confirmation.
Hedging Party: For all applicable Potential Adjustment Events and Extraordinary Events, BofA
Determining Party: For all Extraordinary Events, BofA
Non-Reliance: Applicable
Agreements and Acknowledgments Regarding Hedging Activities: Applicable
Additional Acknowledgments: Applicable

3. **Account Details**:
   - (a) Account for delivery of Shares to Counterparty: As provided separately in writing.
   - (b) Account for payments to Counterparty: As provided separately in writing.
   - (c) Account for payments to BofA: As provided separately in writing.

4. **Offices**:
   - (a) The Office of Counterparty for the Transaction is: Counterparty is not a Multibranch Party
   - (b) The Office of BofA for the Transaction is: Bank of America, N.A. c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated Bank of America Tower at One Bryant Park New York, NY 10036

5. **Notices**: For purposes of this Confirmation:
   - (a) Address for notices or communications to Counterparty: Varian Medical Systems, Inc.
     3100 Hansen Way
     Palo Alto, CA 94304-1038
     Attn: Franco Palomba
     Telephone: 650-424-5955
     Facsimile: 650-842-5080

     With a copy to:
     Varian Medical Systems, Inc.
     3100 Hansen Way
     Palo Alto, CA 94304-1038
     Attn: General Counsel
     Telephone: 650-424-6226
     Facsimile: 650-424-5998

(a) Counterparty acknowledges and agrees that the Initial Shares delivered on the Initial Share Delivery Date may be sold short to Counterparty. Counterparty further acknowledges and agrees that BofA may, during (i) the period from the date hereof to the Valuation Date or, if later, the Scheduled Earliest Acceleration Date without regard to any adjustment thereof pursuant to “Special Provisions regarding Transaction Announcements” below, and (ii) the period from and including the first Settlement Valuation Date to and including the last Settlement Valuation Date, if any (together, the “Relevant Period”), purchase Shares in connection with the Transaction, which Shares may be used to cover all or a portion of such short sale or may be delivered to Counterparty. Such purchases will be conducted independently of Counterparty. The timing of such purchases by BofA, the number of Shares purchased by BofA on any day, the price paid per Share pursuant to such purchases and the manner in which such purchases are made, including without limitation whether such purchases are made on any securities exchange or privately, shall be within the absolute discretion of BofA. It is the intent of the parties that the Transaction comply with the requirements of Rule 10b5-1(c)(1)(i)(B) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and the parties agree that this Confirmation shall be interpreted to comply with the requirements of Rule 10b5-1(c), and Counterparty shall not take any action that results in the Transaction not so complying with such requirements. Without limiting the generality of the preceding sentence, Counterparty acknowledges and agrees that (A) Counterparty does not have, and shall not attempt to exercise, any influence over how, when or whether BofA effects any purchases of Shares in connection with the Transaction, (B) during the period beginning on (but excluding) the date of this Confirmation and ending on (and including) the last day of the Relevant Period, neither Counterparty nor its officers or employees shall, directly or indirectly, communicate any information regarding Counterparty or the Shares to any employee of BofA or its Affiliates responsible for trading the Shares in connection with the transactions contemplated hereby, (C) Counterparty is entering into the Transaction in good faith and not as part of a plan or scheme to evade compliance with federal securities laws including, without limitation, Rule 10b-5 promulgated under the Exchange Act and (D) Counterparty will not alter or deviate from this Confirmation or enter into or alter a corresponding hedging transaction with respect to the Shares. Counterparty also acknowledges and agrees that any amendment, modification, waiver or termination of this Confirmation must be effected in accordance with the requirements of the amendment or termination of a “plan” as defined in Rule 10b5-1(c) under the Exchange Act. Without limiting the generality of the foregoing, any such amendment, modification, waiver or termination shall be made in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5 under the Exchange Act, and no such amendment, modification or waiver shall be made at any time at which Counterparty or any officer or director of Counterparty is aware of any material nonpublic information regarding Counterparty or the Shares.

(b) Counterparty agrees that neither Counterparty nor any of its Affiliates or agents shall take any action that would cause Regulation M to be applicable to any purchases of Shares, or any security for which the Shares are a reference security (as defined in Regulation M), by Counterparty or any of its affiliated purchasers (as defined in Regulation M) during the Relevant Period.

(c) Counterparty represents and warrants to BofA that the total number of Shares purchased in Rule 10b-18 purchases of blocks pursuant to the once-a-week block exception contained in Rule 10b-18(b)(4) by or for Counterparty or any of its affiliated purchasers during each of the four calendar weeks preceding the first day of the Relevant Period and during the calendar week in which the first day of the Relevant Period occurs (“Rule 10b-18 purchase”, “blocks” and “affiliated purchaser” each being used as defined in Rule 10b-18) is zero.
(d) During the Relevant Period, Counterparty shall (i) to the extent that it is within its reasonable control, not permit to be made any public announcement (as defined in Rule 165(f) under the Securities Act of 1933, as amended (the “Securities Act”) of any merger, acquisition, or similar transaction involving a recapitalization relating to Counterparty (other than any such transaction in which the consideration consists solely of cash and there is no valuation period), unless such public announcement is made prior to the opening or after the close of the regular trading session on the Exchange for the Shares, (ii) promptly notify BofA following any such announcement that such announcement has been made and (iii) promptly deliver to BofA following the making of any such announcement a certificate indicating (A) Counterparty’s average daily Rule 10b-18 purchases (as defined in Rule 10b-18) during the three full calendar months preceding the date of the announcement of such transaction and (B) Counterparty’s block purchases (as defined in Rule 10b-18) effected pursuant to paragraph (b)(4) of Rule 10b-18 during the three full calendar months preceding the date of the announcement of such transaction. In addition, Counterparty shall promptly notify BofA of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. Counterparty acknowledges that any such public announcement may result in a Regulatory Disruption and may cause the Relevant Period to be suspended. Accordingly, Counterparty acknowledges that its actions in relation to any such announcement or transaction must comply with the standards set forth in Section 6(a) above.

(e) Without the prior written consent of BofA, Counterparty shall not, and shall cause its Affiliates and affiliated purchasers (each as defined in Rule 10b-18) not to, directly or indirectly (including, without limitation, by means of a cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable for Shares during the Relevant Period.

7. Representations, Warranties and Agreements.

(a) In addition to the representations, warranties and agreements in the Agreement and those contained elsewhere herein, Counterparty represents and warrants to and for the benefit of, and agrees with, BofA as follows:

(i) As of the Trade Date, (A) none of Counterparty and its officers and directors is aware of any material nonpublic information regarding Counterparty or the Shares and (B) all reports and other documents filed by Counterparty with the Securities and Exchange Commission pursuant to the Exchange Act when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.

(ii) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that BofA is not making any representations or warranties or taking any position or expressing any view with respect to the treatment of the Transaction under any accounting standards including ASC Topic 260, Earnings Per Share, ASC Topic 815, Derivatives and Hedging, or ASC Topic 480, Distinguishing Liabilities from Equity and ASC 815-40, Derivatives and Hedging – Contracts in Entity’s Own Equity (or any successor issue statements) or under FASB’s Liabilities & Equity Project.

(iii) Without limiting the generality of Section 3(a)(iii) of the Agreement, the Transaction will not violate Rule 13e-1 or Rule 13e-4 under the Exchange Act.

(iv) Prior to the Trade Date, Counterparty shall deliver to BofA a resolution of Counterparty’s board of directors authorizing the Transaction and such other certificate or certificates as BofA shall reasonably request. Counterparty has publicly disclosed on each of November 17, 2009 and August 9, 2010 its intention to institute a program for the acquisition of Shares.
(v) Counterparty is not entering into this Confirmation to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act, and will not engage in any other securities or derivative transaction to such ends.

(vi) Counterparty is not, and after giving effect to the transactions contemplated hereby will not be, required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.

(vii) On the Trade Date, the Prepayment Date, the Initial Share Delivery Date and the Settlement Date, Counterparty is not, or will not be, “insolvent” (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the “Bankruptcy Code”)) and Counterparty would be able to purchase the Shares hereunder in compliance with the corporate laws of the jurisdiction of its incorporation.

(viii) No state or local (including non-U.S. jurisdictions) law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) as a result of BofA or its affiliates owning or holding (however defined) Shares.

(ix) Counterparty shall not declare or pay any Dividend (as defined above) to holders of record as of any date occurring prior to the Settlement Date or, if the provisions of Annex A apply, the Cash Settlement Payment Date.

(x) Counterparty understands no obligations of BofA to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any affiliate of BofA or any governmental agency.

(b) Each of BofA and Counterparty agrees and represents that it is an “eligible contract participant” as defined in Section 1a(12) of the U.S. Commodity Exchange Act, as amended.

(c) Each party acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act, by virtue of Section 4(2) thereof. Accordingly, each party represents and warrants to the other that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment, (ii) it is an “accredited investor” as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof, and (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws.

(d) Counterparty agrees and acknowledges that BofA is a “financial institution,” “swap participant” and “financial participant” within the meaning of Sections 101(22), 101(53C) and 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge that it is the intent of the parties that (A) this Confirmation is (i) a “securities contract,” as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “termination value,” “payment amount” or “other transfer obligation” within the meaning of Section 362 of the Bankruptcy Code and a “settlement payment,” within the meaning of Section 546 of the Bankruptcy Code and (ii) a “swap agreement,” as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “termination value,” “payment amount” or “other transfer obligation” within the meaning of Section 362 of the Bankruptcy Code and a “transfer,” as such term is defined in Section 101(54) of the Bankruptcy Code and a “payment or other transfer of property” within the meaning of Sections 362 and 546 of the Bankruptcy Code, and (B) BofA is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 362(o), 546(e), 546(g), 548(d)(2), 555, 560 and 561 of the Bankruptcy Code.

(e) BofA represents, warrants and covenants to Counterparty that it has implemented reasonable policies and procedures, taking into consideration the nature of its business, to ensure that individuals making investment decisions relating to the Transaction are not aware of material nonpublic information regarding Counterparty or the Shares of which other individuals at BofA may be aware.
(f) BofA agrees with Counterparty that BofA shall not take any action in connection with the Transaction with the intention of manipulating any trading prices of the Shares in violation of the Exchange Act and the rules and regulations thereunder.

8. **Agreements and Acknowledgements Regarding Hedging.**

Counterparty acknowledges and agrees that:

(a) During the Relevant Period, BofA and its Affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction;

(b) BofA and its Affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction;

(c) BofA shall make its own determination as to whether, when or in what manner any hedging or market activities in Counterparty’s securities shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Settlement Price and/or the VWAP Price; and

(d) Any market activities of BofA and its Affiliates with respect to Shares may affect the market price and volatility of Shares, as well as the Settlement Price and/or the VWAP Price, each in a manner that may be adverse to Counterparty.

9. **Special Provisions regarding Transaction Announcements.**

(a) If a Transaction Announcement occurs on or prior to the Settlement Date or the Cash Settlement Payment Date, as the case may be, then the Number of Shares to be Delivered shall be determined as if the words “minus (ii) the Discount” had been deleted from the definition thereof. If a Transaction Announcement occurs after the Trade Date but prior to the Scheduled Earliest Acceleration Date, the Scheduled Earliest Acceleration Date shall be adjusted to be the date of such Transaction Announcement.

(b) “Transaction Announcement” means (i) the announcement of an Acquisition Transaction, (ii) an announcement that Counterparty or any of its subsidiaries has entered into an agreement, a letter of intent or an understanding to enter into an Acquisition Transaction, (iii) the announcement of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, an Acquisition Transaction, or (iv) any other announcement that in the reasonable judgment of the Calculation Agent may result in an Acquisition Transaction. For the avoidance of doubt, announcements as used in this definition of Transaction Announcement refer to any public announcement whether made by the Issuer or a third party.

“Acquisition Transaction” means (i) any Merger Event (and for purposes of this definition the definition of Merger Event shall be read with the references therein to “100%” being replaced by “15%” and to “50%” by “75%” and as if the clause beginning immediately following the definition of Reverse Merger therein to the end of such definition were deleted) or Tender Offer, or any other transaction involving the merger of Counterparty with or into any third party, (ii) the sale or transfer of all or substantially all of the assets of Counterparty, (iii) a recapitalization, reclassification, binding share exchange or other similar transaction, (iv) any acquisition, lease, exchange, transfer, disposition (including by way of spin-off or distribution) of assets (including any capital stock or other ownership interests in subsidiaries) or other similar event by Counterparty or any of its subsidiaries where the aggregate consideration transferable or receivable by or to Counterparty or its subsidiaries exceeds 15% of the market capitalization of Counterparty and (v) any transaction in which Counterparty or its board of directors has a legal obligation to make a recommendation to its shareholders in respect of such transaction (whether pursuant to Rule 14e-2 under the Exchange Act or otherwise).

(a) Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If either party would owe the other party any amount pursuant to Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement (a “Payment Obligation”), Counterparty shall have the right, in its sole discretion, to satisfy or to require BoFA to satisfy, as the case may be, any such Payment Obligation, in whole or in part, by the Share Termination Alternative (as defined below) by giving irrevocable telephonic notice to BoFA, confirmed in writing within one Scheduled Trading Day, no later than 9:30 A.M. New York City time on the Merger Date, Tender Offer Date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable (“Notice of Share Termination”); provided that Counterparty shall not have the right to so elect in the event of (i) an Insolvency, a Nationalization, a Merger Event or a Tender Offer, in each case, in which the consideration or proceeds to be paid to holders of Shares consists solely of cash or (ii) an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party, which Event of Default or Termination Event resulted from an event or events within Counterparty’s control. Upon such Notice of Share Termination, the following provisions shall apply on the Scheduled Trading Day immediately following the Merger Date, Tender Offer Date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable, with respect to the Payment Obligation or such portion of the Payment Obligation for which the Share Termination Alternative has been elected (the “Applicable Portion”):

Share Termination Alternative: Applicable and means, if delivery pursuant to the Share Termination Alternative is owed by BoFA, that BoFA shall deliver to Counterparty the Share Termination Delivery Property on the date on which the Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable, or such later date as the Calculation Agent may reasonably determine (the “Share Termination Payment Date”), in satisfaction of the Payment Obligation or the Applicable Portion, as the case may be. If delivery pursuant to the Share Termination Alternative is owed by Counterparty, paragraphs 2 through 5 of Annex A shall apply as if such delivery were a settlement of the Transaction to which Net Share Settlement (as defined in Annex A) applied, the Cash Settlement Payment Date were the Early Termination Date, the Forward Cash Settlement Amount were zero (0) minus the Payment Obligation (or the Applicable Portion, as the case may be) owed by Counterparty, and “Shares” as used in Annex A were replaced by “Share Termination Delivery Units.”

Share Termination Delivery Property: A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation (or the Applicable Portion, as the case may be) divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.

Share Termination Unit Price: The value of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its good faith discretion by commercially reasonable means and notified by the Calculation Agent to the parties at the time of notification of the Payment Obligation.

Share Termination Delivery Unit: In the case of a Termination Event, Event of Default, Delisting or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization, Merger Event or Tender Offer, one Share or a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Insolvency, Nationalization, Merger Event or Tender Offer. If such Insolvency, Nationalization, Merger Event or Tender Offer involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
(b) Equity Rights. BofA acknowledges and agrees that this Confirmation is not intended to convey to it rights with respect to the Transaction that are senior to the claims of common stockholders in the event of Counterparty’s bankruptcy. For the avoidance of doubt, the parties agree that the preceding sentence shall not apply at any time other than during Counterparty’s bankruptcy to any claim arising as a result of a breach by Counterparty of any of its obligations under this Confirmation or the Agreement. For the avoidance of doubt, the parties acknowledge that this Confirmation is not secured by any collateral that would otherwise secure the obligations of Counterparty herein under or pursuant to any other agreement.

(c) Staggered Settlement. If BofA would owe Counterparty any Shares pursuant to the “Settlement Terms” above, BofA may, by notice to Counterparty on or prior to the Settlement Date (a “Nominal Settlement Date”), elect to deliver the Shares deliverable on such Nominal Settlement Date on two or more dates (each, a “Staggered Settlement Date”) or at two or more times on the Nominal Settlement Date as follows: (i) in such notice, BofA will specify to Counterparty the related Staggered Settlement Dates (each of which will be on or prior to such Nominal Settlement Date) or delivery times and how it will allocate the Shares it is required to deliver under “Settlement Terms” above among the Staggered Settlement Dates or delivery times; and (ii) the aggregate number of Shares that BofA will deliver to Counterparty hereunder on all such Staggered Settlement Dates and delivery times will equal the number of Shares that BofA would otherwise be required to deliver on such Nominal Settlement Date.

(d) Adjustments. For the avoidance of doubt, whenever the Calculation Agent is called upon to make an adjustment pursuant to the terms of this Confirmation or the Definitions to take into account the effect of an event, the Calculation Agent shall make such adjustment by reference to the effect of such event on the Hedging Party, assuming that the Hedging Party maintains a commercially reasonable hedge position.

(e) Transfer and Assignment. BofA may transfer or assign its rights and obligations hereunder and under the Agreement, in whole or in part, to any of its Affiliates without the consent of Counterparty.

(f) Additional Termination Events.

(i) It shall constitute an Additional Termination Event with respect to which the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party if BofA shall be the party entitled to designate an Early Termination Date pursuant to Section 6 (b) of the Agreement if, at any time during the Relevant Period, the price per Share on the Exchange, as determined by the Calculation Agent, is at or below the Threshold Price (as provided in Annex B to this Confirmation).

(ii) Notwithstanding anything to the contrary in the Equity Definitions, if, as a result of an Extraordinary Event, the Transaction would be cancelled or terminated (whether in whole or in part) pursuant to Article 12 of the Equity Definitions, an Additional Termination Event (with such terminated Transaction (or portion thereof) being the Affected Transaction and Counterparty being the sole Affected Party) shall be deemed to occur, and, in lieu of Sections 12.7, 12.8 and 12.9 of the Equity Definitions, Section 6 of the Agreement shall apply to such Affected Transaction.
(g) Amendments to Equity Definitions. The following amendments shall be made to the Equity Definitions:

(i) Section 11.2(a) of the Equity Definitions is hereby amended by deleting the words “a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “an economic effect on the relevant Transaction”;

(ii) The first sentence of Section 11.2(c) of the Equity Definitions, prior to clause (A) thereof, is hereby amended to read as follows: ‘(c) If “Calculation Agent Adjustment” is specified as the Method of Adjustment in the related Confirmation of a Share Option Transaction or Share Forward Transaction, then following the announcement or occurrence of any Potential Adjustment Event, the Calculation Agent will determine whether such Potential Adjustment Event has an economic effect on the Transaction and, if so, will (i) make appropriate adjustment(s), if any, to any one or more of:’ and the portion of such sentence immediately preceding clause (ii) thereof is hereby amended by deleting the words “diluting or concentrative” and the words “(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)” and replacing such latter phrase with the words “(and, for the avoidance of doubt, adjustments may be made to account solely for changes in volatility, stock loan rate or liquidity relative to the relevant Shares)”;

(iii) Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “economic effect on the relevant Transaction”;

(iv) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, and (2) deleting the semi-colon at the end of subsection (B) thereof and inserting the following words therefor “or (C) at BofA’s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that issuer”;

(v) Section 12.9(b)(iv) of the Equity Definitions is hereby amended by (A) deleting (1) subsection (A) in its entirety, (2) the phrase “or (B)” following subsection (A) and (3) the phrase “in each case” in subsection (B); and (B) deleting the phrase “neither the Non-Hedging Party nor the Lending Party lends Shares in the amount of the Hedging Shares or” in the penultimate sentence; and

(vi) Section 12.9(b)(v) of the Equity Definitions is hereby amended by (A) adding the word “or” immediately before subsection “(B)” and deleting the comma at the end of subsection (A); and (B)(1) deleting subsection (C) in its entirety, (2) deleting the word “or” immediately preceding subsection (C) and (3) replacing in the penultimate sentence the words “either party” with “the Hedging Party” and (4) deleting clause (X) in the final sentence.

(h) No Netting and Set-off. Each party waives any and all rights it may have to set off obligations arising under the Agreement and the Transaction against other obligations between the parties, whether arising under any other agreement, applicable law or otherwise.

(i) Disclosure. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

(j) Designation by BofA. Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing BofA to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, BofA (the “Designator”) may designate any of its Affiliates (the “Designee”) to deliver or take delivery, as the case may be, and otherwise perform its obligations to deliver, if any, or take delivery of, as the case may be, any such Shares or other securities in respect of the Transaction, and the Designee may assume such obligations, if any. Such designation shall not relieve the Designator of any of its obligations, if any, hereunder. Notwithstanding the previous sentence, if the Designee shall have performed the obligations, if any, of the Designator hereunder, then the Designator shall be discharged of its obligations, if any, to Counterparty to the extent of such performance.
(k) Termination Currency. The Termination Currency shall be USD.

(l) Waiver of Trial by Jury. EACH OF COUNTERPARTY AND BOFA HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TRANSACTION OR THE ACTIONS OF BOFA OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.

(m) Governing Law; Jurisdiction. THIS CONFIRMATION AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS CONFIRMATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS.

(n) Counterparts. This Confirmation may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Confirmation by signing and delivering one or more counterparts.
Please confirm your agreement to be bound by the terms stated herein by executing the copy of this Confirmation enclosed for that purpose and returning it to us by mail or facsimile transmission to the address for Notices indicated above.

Yours sincerely,

BANK OF AMERICA, N.A.

By:  /s/ Jake Mendelsohn
Name:  Jake Mendelsohn
Title:  Managing Director

Confirmed as of the date first above written:

VARIAN MEDICAL SYSTEMS, INC.

By:  /s/ Timothy E. Guertin
Name:  Timothy E. Guertin
Title:  President and CEO

By:  /s/ Elisha W. Finney
Name:  Elisha W. Finney
Title:  SVP and CFO
ANNEX A

COUNTERPARTY SETTLEMENT PROVISIONS

1. The following Counterparty Settlement Provisions shall apply to the extent indicated under the Confirmation:

Settlement Currency: USD

Settlement Method Election: Applicable; provided that (i) Section 7.1 of the Equity Definitions is hereby amended by deleting the word “Physical” in the sixth line thereof and replacing it with the words “Net Share” and (ii) the Electing Party may make a settlement method election only if the Electing Party represents and warrants to BofA in writing on the date it notifies BofA of its election that, as of such date, (A) none of Counterparty and its officers and directors is aware of any material nonpublic information regarding Counterparty or the Shares and (B) Counterparty is electing the settlement method in good faith and not as part of a plan or scheme to evade compliance with the federal securities laws.

Electing Party: Counterparty

Settlement Method Election Date: Any date on or prior to the date 10 Exchange Business Days prior to the Valuation Date; provided that if BofA accelerates the Final Averaging Date pursuant to the proviso to the definition of Final Averaging Date, the Settlement Method Election Date shall be any date on or prior to the second Exchange Business Day immediately following the Valuation Date.

Default Settlement Method: Cash Settlement

Special Settlement: Either (i) a settlement to which this Annex A applies that follows the occurrence of a Transaction Announcement to which Section 9 of this Confirmation applies or (ii) any settlement to which paragraphs 2 through 5 of this Annex A apply that follows a termination or cancellation of the Transaction pursuant to Section 6 of the Agreement or Article 12 of the Equity Definitions to which Section 10(a) of this Confirmation applies.

Forward Cash Settlement Amount: The Number of Shares to be Delivered multiplied by the Settlement Valuation Price.

Settlement Valuation Price: The arithmetic average of the VWAP Prices for all Settlement Valuation Dates, subject to Averaging Date Disruption, determined as if each Settlement Valuation Date were an Averaging Date (with Averaging Date Disruption applying as if the last Settlement Valuation Date were the Final Averaging Date and the Settlement Valuation Price were the Settlement Price).

Settlement Valuation Dates: A number of Scheduled Trading Days selected by BofA in its good faith and commercially reasonable discretion, beginning on the Scheduled Trading Day immediately following the later of the Settlement Method Election Date and the Final Averaging Date.

Cash Settlement: If Cash Settlement is applicable, then Counterparty shall pay to BofA the absolute value of the Forward Cash Settlement Amount on the Cash Settlement Payment Date.

Cash Settlement Payment Date: The date one Settlement Cycle following the last Settlement Valuation Date.
2. Net Share Settlement shall be made by delivery on the Settlement Date of a number of Shares equal to the product of 102% and the absolute value of the Number of Shares to be Delivered; provided that in the case of a Special Settlement, Net Share Settlement shall be made (i) by delivery on the Cash Settlement Payment Date (such date, the “Net Share Settlement Date”) of a number of Shares (the “Restricted Payment Shares”) with a value equal to the absolute value of the Forward Cash Settlement Amount, with such Shares’ value based on the realizable market value thereof to BofA (which value shall take into account an illiquidity discount resulting from the fact that the Restricted Payment Shares will not be registered for resale), as determined by the Calculation Agent (the “Restricted Share Value”), and paragraph 3 of this Annex A shall apply to such Restricted Payment Shares, and (ii) by delivery of the Make-Whole Payment Shares as described in paragraph 4 below.

3.(a) All Restricted Payment Shares and Make-Whole Payment Shares shall be delivered to BofA (or any affiliate of BofA designated by BofA) pursuant to the exemption from the registration requirements of the Securities Act provided by Section 4(2) thereof.

(b) As of or prior to the date of delivery, Merrill Lynch, Pierce, Fenner & Smith Incorporated, BofA and any potential purchaser of any such Shares from BofA (or any affiliate of BofA designated by BofA) identified by BofA shall be afforded a commercially reasonable opportunity to conduct a due diligence investigation with respect to Counterparty customary in scope for private placements of equity securities of similar size by similar companies (including, without limitation, the right to have made available to them for inspection all financial and other records, pertinent corporate documents and other information reasonably requested by them), provided that any such potential purchaser may be required by Counterparty to enter into a customary nondisclosure agreement with Counterparty in respect of any such due diligence investigation.

(c) As of the date of delivery, Counterparty shall enter into an agreement (a “Private Placement Agreement”) with BofA (or any affiliate of BofA designated by BofA) in connection with the private placement of such Shares by Counterparty to BofA (or any such affiliate) and the private resale of such shares by BofA (or any such affiliate), substantially similar to private placement purchase agreements customary for private placements of equity securities of similar size by similar companies, in form and substance commercially reasonably satisfactory to BofA, which Private Placement Agreement shall include, without limitation, provisions substantially similar to those contained in such private placement purchase agreements relating to the indemnification of, and contribution in connection with the liability of, BofA and its affiliates, and shall provide for the payment by Counterparty of the reasonable fees and actual documented out-of-pocket expenses in connection with such resale, including reasonable fees and expenses of counsel for BofA, and shall contain representations, warranties and agreements of Counterparty reasonably necessary or advisable to establish and maintain the availability of an exemption from the registration requirements of the Securities Act for such resales.

(d) Neither Counterparty nor BofA shall take or cause to be taken any action that would make unavailable either (i) the exemption set forth in Section 4(2) of the Securities Act for the sale of any Restricted Payment Shares or Make-Whole Payment Shares by Counterparty to BofA or (ii) an exemption from the registration requirements of the Securities Act reasonably acceptable to BofA for resales of Restricted Payment Shares and Make-Whole Payment Shares by the BofA (or an affiliate of BofA).

(e) Counterparty expressly agrees and acknowledges that the public disclosure of material information relating to Counterparty is within Counterparty’s control.

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4. If Restricted Payment Shares are delivered in accordance with paragraph 3 above, on the last Settlement Valuation Date, a balance (the “Settlement Balance”) shall be established with an initial balance equal to the absolute value of the Forward Cash Settlement Amount. Following the delivery of Restricted Payment Shares or any Make-Whole Payment Shares, BofA shall sell all such Restricted Payment Shares or Make-Whole Payment Shares in a commercially reasonable manner. At the end of each Exchange Business Day upon which sales have been made, the Settlement Balance shall be reduced by an amount equal to the aggregate proceeds received by BofA or its affiliate upon the sale of such Restricted Payment Shares or Make-Whole Payment Shares, less a customary and commercially reasonable private placement fee for private placements of common stock by similar issuers. If, on any Exchange Business Day, all Restricted Payment Shares and Make-Whole Payment Shares have been sold and the Settlement Balance has not been reduced to zero, Counterparty shall, in its sole discretion, (i) deliver to BofA or as directed by BofA one Settlement Cycle following such Exchange Business Day an additional number of Shares (the “Make-Whole Payment Shares” and, together with the Restricted Payment Shares, the “Payment Shares”) equal to (x) the Settlement Balance as of such Exchange Business Day divided by (y) the Restricted Share Value of the Make-Whole Payment Shares as of such Exchange Business Day or (ii) promptly deliver to BofA cash in an amount equal to the then remaining Settlement Balance. This provision shall be applied successively until either the Settlement Balance is reduced to zero or the aggregate number of Restricted Payment Shares and Make-Whole Payment Shares equals the Maximum Deliverable Number. If on any Exchange Business Day, Restricted Payment Shares and Make-Whole Payment Shares remain unsold and the Settlement Balance has been reduced to zero, BofA shall promptly return such unsold Restricted Payment Shares or Make-Whole Payment Shares.

5. Notwithstanding the foregoing, in no event shall Counterparty be required to deliver more than the Maximum Deliverable Number of Shares hereunder. “Maximum Deliverable Number” means the number of Shares set forth as such in Annex B to this Confirmation. Counterparty represents and warrants to BofA (which representation and warranty shall be deemed to be repeated on each day from the date hereof to the Settlement Date or, if Counterparty has elected to deliver any Payment Shares hereunder in connection with a Special Settlement, to the date on which resale of such Payment Shares is completed (the “Final Resale Date”)) that the Maximum Deliverable Number is equal to or less than the number of authorized but unissued Shares of Counterparty that are not reserved for future issuance in connection with transactions in such Shares (other than the transactions under this Confirmation) on the date of the determination of the Maximum Deliverable Number (such Shares, the “Available Shares”). In the event Counterparty shall not have delivered the full number of Shares otherwise deliverable as a result of this paragraph 5 (the resulting deficit, the “Deficit Shares”), Counterparty shall be continually obligated to deliver, from time to time until the full number of Deficit Shares have been delivered pursuant to this paragraph, Shares when, and to the extent that, (i) Shares are repurchased, acquired or otherwise received by Counterparty or any of its subsidiaries after the date hereof (whether or not in exchange for cash, fair value or any other consideration), (ii) authorized and unissued Shares reserved for issuance in respect of other transactions prior to such date which prior to the relevant date become no longer so reserved or (iii) Counterparty additionally authorizes any unissued Shares that are not reserved for other transactions. Counterparty shall immediately notify BofA of the occurrence of any of the foregoing events (including the number of Shares subject to clause (i), (ii) or (iii) and the corresponding number of Shares to be delivered) and promptly deliver such Shares thereafter.
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<th><strong>Prepayment Amount:</strong></th>
<th>USD 280,000,000</th>
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<td><strong>Scheduled Final Averaging Date:</strong></td>
<td>August 19, 2011 (or if such date is not an Exchange Business Day, the next following Exchange Business Day).</td>
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<tr>
<td><strong>Scheduled Earliest Acceleration Date:</strong></td>
<td>April 18, 2011 (or if such date is not an Exchange Business Day, the next following Exchange Business Day).</td>
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<td><strong>Maximum Number of Knock-out Days:</strong></td>
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* Confidential material redacted and filed separately with the Securities and Exchange Commission.

B-1
Ladies and Gentlemen:

The purpose of this communication (this “Confirmation”) is to confirm the terms and conditions of the Transaction entered into between Bank of America, N.A. ("BofA") and Varian Medical Systems, Inc. ("Counterparty") on the Trade Date specified below (the “Transaction”). The terms of the Transaction shall be set forth in this Confirmation. This Confirmation shall constitute a “Confirmation” as referred to in the ISDA Master Agreement specified below.

1. This Confirmation is subject to, and incorporates, the definitions and provisions of the 2000 ISDA Definitions (including the Annex thereto) (the “2000 Definitions”) and the definitions and provisions of the 2002 ISDA Equity Derivatives Definitions (the “Equity Definitions”, and together with the 2000 Definitions, the “Definitions”), in each case as published by the International Swaps and Derivatives Association, Inc. ("ISDA"). In the event of any inconsistency between the 2000 Definitions and the Equity Definitions, the Equity Definitions will govern.

This Confirmation evidences a complete and binding agreement between BofA and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall be subject to an agreement (the “Agreement”) in the form of the 2002 ISDA Master Agreement (the “ISDA Form”) as if BofA and Counterparty had executed an agreement in such form (without any Schedule but with the elections set forth in this Confirmation). The Transaction shall be the only Transaction under the Agreement.

All provisions contained in, or incorporated by reference to, the Agreement will govern this Confirmation except as expressly modified herein. In the event of any inconsistency between this Confirmation and either the Definitions or the Agreement, this Confirmation shall govern. The Transaction is a Share Forward Transaction within the meaning set forth in the Equity Definitions.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date: August 25, 2011

To: Varian Medical Systems, Inc.
3100 Hansen Way
Palo Alto, CA 94304-1038
Attn: Franco Palomba
Telephone: 650-424-5955
Facsimile: 650-842-5080

From Bank of America, N.A.
c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated
Bank of America Tower at One Bryant Park
New York, NY 10036
Attn: John Servidio
Telephone: 646-855-7127
Facsimile: 704-208-2869

Re: Issuer Forward Repurchase Transaction
(Transaction Reference Number: 118359277)
Seller: BofA
Buyer: Counterparty
Shares: The common stock of Counterparty, par value USD 1.00 per share (Ticker Symbol: “VAR”)
Prepayment: Applicable
Prepayment Amount: As provided in Annex B to this Confirmation.
Prepayment Date: The Trade Date
Exchange: The New York Stock Exchange
Related Exchange(s): All Exchanges
Calculation Agent: Bank of America, N.A.

Valuation Terms:

Averaging Dates: Each of the consecutive Exchange Business Days commencing on, and including the Trade Date and ending on, and including, the Final Averaging Date.
Final Averaging Date: The Scheduled Final Averaging Date; provided that BofA shall have the right, in its absolute discretion, at any time to accelerate the Final Averaging Date to any date that is on or after the Scheduled Earliest Acceleration Date by written notice to Counterparty no later than 7:00 P.M., New York City time, on the Exchange Business Day immediately following the accelerated Final Averaging Date.
Scheduled Final Averaging Date: As provided in Annex B to this Confirmation; provided that the Scheduled Final Averaging Date shall be postponed by one Exchange Business Day for each Knock-out Day.
Scheduled Earliest Acceleration Date: As provided in Annex B to this Confirmation.
Valuation Date: The Final Averaging Date.
Knock-out Day: An Averaging Date (i) for which the VWAP Price exceeds the Knock-out Level and (ii) that is not a Disrupted Day in full; provided that there may be no more than the Maximum Number of Knock-out Days in the period commencing on, and including, the fifth Exchange Business Day immediately following the Trade Date and ending on, and including, the Final Averaging Date and, accordingly, once the Maximum Number of Knock-out Days is reached, no more Exchange Business Days in such period shall be Knock-out Days.
Knock-out Level: As provided in Annex B to this Confirmation.
Maximum Number of Knock-out Days: As provided in Annex B to this Confirmation.
Averaging Date Disruption: Modified Postponement, provided that notwithstanding anything to the contrary in the Equity Definitions, if a Market Disruption Event occurs on any Averaging Date, the Calculation Agent may, in its good faith and commercially reasonable discretion, and if appropriate in light of market conditions, regulatory considerations or otherwise, take any or all of the following actions: (i) postpone the Scheduled Final Averaging Date in accordance with Modified Postponement (as

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modified herein) and/or (ii) determine that such Averaging Date is a Disrupted Day only in part, in which case the Calculation Agent shall (x) determine the VWAP Price for such Disrupted Day based on Rule 10b-18 eligible transactions in the Shares on such Disrupted Day taking into account the nature and duration of such Market Disruption Event and (y) determine the Settlement Price based on an appropriately weighted average instead of the arithmetic average described under “Settlement Price” below. Any adjustment to the Settlement Price will be made in good faith and in a commercially reasonable manner by the Calculation Agent and will be based on, among other factors, the duration of any Market Disruption Event and the volume, historical trading patterns and price of the Shares. Any Exchange Business Day on which, as of the date hereof, the Exchange is scheduled to close prior to its normal close of trading shall be deemed not to be an Exchange Business Day; if a closure of the Exchange prior to its normal close of trading on any Exchange Business Day is scheduled following the date hereof, then such Exchange Business Day shall be deemed to be a Disrupted Day in full.

Section 6.6(a) of the Equity Definitions is hereby amended by replacing the word “shall” in the fifth line thereof with the word “may,” and by deleting clause (i) thereof, and Section 6.7(c)(iii)(A) of the Equity Definitions is hereby amended by replacing the word “shall” in the sixth and eighth line thereof with the word “may.”

Market Disruption Events: Section 6.3(a) of the Equity Definitions is hereby amended (A) by replacing the words “during the one hour period that ends at the relevant Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out Valuation Time, as the case may be” with “on any Scheduled Trading Day during the Settlement Valuation Period” in clause (ii) thereof, and (B) by replacing the words “or (iii) an Early Closure.” therein with “(iii) an Early Closure, or (iv) a Regulatory Disruption.”

Regulatory Disruption: Any event that BofA, in its good faith and commercially reasonable discretion, determines makes it appropriate with regard to any legal, regulatory or self-regulatory requirements or related policies and procedures for BofA to refrain from or decrease any market activity in connection with the Transaction. BofA shall notify Counterparty as soon as reasonably practicable that a Regulatory Disruption has occurred and the Averaging Dates affected by it.

Settlement Terms:

Initial Share Delivery: On the Initial Share Delivery Date, BofA shall deliver to Counterparty the Initial Shares.

Initial Share Delivery Date: The Trade Date.

Initial Shares: As provided in Annex B to this Confirmation.

Settlement Date: If the Number of Shares to be Delivered is positive, the date that falls one Settlement Cycle following the Valuation Date.

Settlement: On the Settlement Date, BofA shall deliver to Counterparty the Number of Shares to be Delivered, if a positive number. If the
Number of Shares to be Delivered is a negative number, the Counterparty Settlement Provisions in Annex A shall apply.

Number of Shares to be Delivered: A number of Shares equal to (a) the Prepayment Amount divided by (b) (i) the Settlement Price minus (ii) the Discount; provided that the Number of Shares to be Delivered as so determined shall be reduced by the number of Shares delivered on the Initial Share Delivery Date.

Settlement Price: The arithmetic average of the VWAP Prices for all Averaging Dates; provided that any Averaging Date that is a Knock-out Day shall be deemed not to be an Averaging Date for purposes of calculating the Settlement Price.

VWAP Price: For any Averaging Date, the Rule 10b-18 dollar volume weighted average price per Share for such day based on transactions executed during such day, as reported on Bloomberg Page “VAR.N <Equity> AQR SEC” (or any successor thereto) or, in the event such price is not so reported on such day for any reason or is manifestly incorrect, as reasonably determined by the Calculation Agent using a volume weighted method.

Discount: As provided in Annex B to this Confirmation.

Excess Dividend Amount: For the avoidance of doubt, all references to the Excess Dividend Amount in Section 9.2(a) (iii) of the Equity Definitions shall be deleted.

Other Applicable Provisions: To the extent either party is obligated to deliver Shares hereunder, the provisions of the last sentence of Section 9.2 and Sections 9.8, 9.9, 9.10, 9.11 (except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws arising as a result of the fact that Counterparty is the Issuer of the Shares) and 9.12 of the Equity Definitions will be applicable as if “Physical Settlement” applied to the Transaction.

Dividends:

Dividend: Any dividend or distribution on the Shares other than any dividend or distribution of the type described in Sections 11.2(e)(i), 11.2(e)(ii)(A) or 11.2(e)(ii)(B) of the Equity Definitions.

Share Adjustments:

Method of Adjustment: Calculation Agent Adjustment; provided that the declaration or payment of Dividends shall not be a Potential Adjustment Event.

It shall constitute an additional Potential Adjustment Event if the Scheduled Final Averaging Date is postponed pursuant to “Averaging Date Disruption” above, in which case the Calculation Agent may, in its good faith and commercially reasonable discretion, adjust any relevant terms of the Transaction as the Calculation Agent determines appropriate to account for the economic effect on the Transaction of such postponement, based on stock price, stock price volatility, interest rates, strike price, stock loan rate, liquidity and Averaging Dates.

Extraordinary Events:

Consequences of Merger Events:
(a) Share-for-Share: Modified Calculation Agent Adjustment

(b) Share-for-Other: Cancellation and Payment

(c) Share-for-Combined: Component Adjustment

Tender Offer: Applicable

Consequences of Tender Offers:

(a) Share-for-Share: Modified Calculation Agent Adjustment

(b) Share-for-Other: Modified Calculation Agent Adjustment

(c) Share-for-Combined: Modified Calculation Agent Adjustment

Composition of Combined Consideration: Not Applicable

Consequences of Announcement Events:

Modified Calculation Agent Adjustment as set forth in Section 12.3(d) of the Equity Definitions; provided that references to “Tender Offer” shall be replaced by references to “Announcement Event” and references to “Tender Offer Date” shall be replaced by references to “Announcement Date.” An Announcement Event shall be an “Extraordinary Event” for purposes of the Equity Definitions, to which Article 12 of the Equity Definitions is applicable.

Announcement Event: The occurrence of an Announcement Date in respect of a potential Acquisition Transaction (as defined in Section 9 below).

Announcement Date: The date of the first public announcement in relation to an Acquisition Transaction, or any publicly announced change or amendment to the announcement giving rise to an Announcement Date.

Provisions applicable to Merger Events and Tender Offers: The consequences set forth opposite “Consequences of Merger Events” and “Consequences of Tender Offers” above shall apply regardless of whether a particular Merger Event or Tender Offer relates to an Announcement Date for which an adjustment has been made pursuant to Consequences of Announcement Events, without duplication of any such adjustment.

New Shares: In the definition of New Shares in Section 12.1(i) of the Equity Definitions, the text in clause (i) thereof shall be deleted in its entirety (including the word “and” following such clause (i)) and replaced with “publicly quoted, traded or listed on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)”.

Nationalization, Insolvency or Delisting: Cancellation and Payment (Calculation Agent Determination); provided that in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it shall also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The NASDAQ Global Market or The NASDAQ Global Select Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall thereafter be deemed to be the Exchange.
Additional Disruption Events:

- Change in Law: Applicable
- Failure to Deliver: Applicable
- Insolvency Filing: Applicable
- Hedging Disruption: Applicable
- Increased Cost of Hedging: Applicable
- Loss of Stock Borrow: Applicable
  - Maximum Stock Loan Rate: As provided in Annex B to this Confirmation.
  - Increased Cost of Stock Borrow: Applicable
  - Initial Stock Loan Rate: As provided in Annex B to this Confirmation.

Hedging Party: For all applicable Potential Adjustment Events and Extraordinary Events, BofA

Determining Party: For all Extraordinary Events, BofA

Non-Reliance: Applicable

Agreements and Acknowledgments Regarding Hedging Activities: Applicable

Additional Acknowledgments: Applicable

3. Account Details:
   (a) Account for delivery of Shares to Counterparty: As provided separately in writing.
   (b) Account for payments to Counterparty: As provided separately in writing.
   (c) Account for payments to BofA: As provided separately in writing.

4. Offices:
   (a) The Office of Counterparty for the Transaction is: Counterparty is not a Multibranch Party
   (b) The Office of BofA for the Transaction is:
       Bank of America, N.A.
       c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated
       Bank of America Tower at One Bryant Park
       New York, NY 10036

5. Notices: For purposes of this Confirmation:
   (a) Address for notices or communications to Counterparty:
       Varian Medical Systems, Inc.
       3100 Hansen Way
       Palo Alto, CA 94304-1038
       Attn: Franco Palomba
       Telephone: 650-424-5955
       Facsimile: 650-842-5080
       With a copy to:
       Varian Medical Systems, Inc.
       3100 Hansen Way

(a) Counterparty acknowledges and agrees that the Initial Shares delivered on the Initial Share Delivery Date may be sold short to Counterparty. Counterparty further acknowledges and agrees that BofA may, during (i) the period from the date hereof to the Valuation Date or, if later, the Scheduled Earliest Acceleration Date without regard to any adjustment thereof pursuant to “Special Provisions regarding Transaction Announcements” below, and (ii) the period from and including the first Settlement Valuation Date to and including the last Settlement Valuation Date, if any (together, the “Relevant Period”), purchase Shares in connection with the Transaction, which Shares may be used to cover all or a portion of such short sale or may be delivered to Counterparty. Such purchases will be conducted independently of Counterparty. The timing of such purchases by BofA, the number of Shares purchased by BofA on any day, the price paid per Share pursuant to such purchases and the manner in which such purchases are made, including without limitation whether such purchases are made on any securities exchange or privately, shall be within the absolute discretion of BofA. It is the intent of the parties that the Transaction comply with the requirements of Rule 10b5-1(c)(1)(i)(B) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and the parties agree that this Confirmation shall be interpreted to comply with the requirements of Rule 10b5-1(c), and Counterparty shall not take any action that results in the Transaction not so complying with such requirements. Without limiting the generality of the preceding sentence, Counterparty acknowledges and agrees that (A) Counterparty does not have, and shall not attempt to exercise, any influence over how, when or whether BofA effects any purchases of Shares in connection with the Transaction, (B) during the period beginning on (but excluding) the date of this Confirmation and ending on (and including) the last day of the Relevant Period, neither Counterparty nor its officers or employees shall, directly or indirectly, communicate any information regarding Counterparty or the Shares to any employee of BofA or its Affiliates responsible for trading the Shares in connection with the transactions contemplated hereby, (C) Counterparty is entering into the Transaction in good faith and not as part of a plan or scheme to evade compliance with federal securities laws including, without limitation, Rule 10b-5 promulgated under the Exchange Act and (D) Counterparty also acknowledges and agrees that any amendment, modification, waiver or termination of this Confirmation must be made in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5 under the Exchange Act, and no such amendment, modification or waiver shall be made at any time at which Counterparty or any officer or director of Counterparty is aware of any material nonpublic information regarding Counterparty or the Shares.

(b) Counterparty agrees that neither Counterparty nor any of its Affiliates or agents shall take any action that would cause Regulation M to be applicable to any purchases of Shares, or any security for which the Shares are a reference security (as defined in Regulation M), by Counterparty or any of its affiliated purchasers (as defined in Regulation M) during the Relevant Period.

(c) Counterparty represents and warrants to BofA that the total number of Shares purchased in Rule 10b-18 purchases of blocks pursuant to the once-a-week block exception contained in Rule 10b-18(b)(4) by or for Counterparty or any of its affiliated purchasers during each of the four calendar weeks preceding the first day of the Relevant Period
and during the calendar week in which the first day of the Relevant Period occurs ("Rule 10b-18 purchase", "blocks" and "affiliated purchaser" each being used as defined in Rule 10b-18) is zero.

(d) During the Relevant Period, Counterparty shall (i) to the extent that it is within its reasonable control, not permit to be made any public announcement (as defined in Rule 165(f) under the Securities Act of 1933, as amended (the “Securities Act”) of any merger, acquisition, or similar transaction involving a recapitalization relating to Counterparty (other than any such transaction in which the consideration consists solely of cash and there is no valuation period), unless such public announcement is made prior to the opening or after the close of the regular trading session on the Exchange for the Shares, (ii) promptly notify BofA following any such announcement that such announcement has been made and (iii) promptly deliver to BofA following the making of any such announcement a certificate indicating (A) Counterparty’s average daily Rule 10b-18 purchases (as defined in Rule 10b-18) during the three full calendar months preceding the date of the announcement of such transaction and (B) Counterparty’s block purchases (as defined in Rule 10b-18) effected pursuant to paragraph (b)(4) of Rule 10b-18 during the three full calendar months preceding the date of the announcement of such transaction. In addition, Counterparty shall promptly notify BofA of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. Counterparty acknowledges that any such public announcement may result in a Regulatory Disruption and may cause the Relevant Period to be suspended. Accordingly, Counterparty acknowledges that its actions in relation to any such announcement or transaction must comply with the standards set forth in Section 6(a) above.

(e) Without the prior written consent of BofA, Counterparty shall not, and shall cause its Affiliates and affiliated purchasers (each as defined in Rule 10b-18) not to, directly or indirectly (including, without limitation, by means of a cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable for Shares during the Relevant Period.

7. Representations, Warranties and Agreements.

(a) In addition to the representations, warranties and agreements in the Agreement and those contained elsewhere herein, Counterparty represents and warrants to and for the benefit of, and agrees with, BofA as follows:

(i) As of the Trade Date, (A) none of Counterparty and its officers and directors is aware of any material nonpublic information regarding Counterparty or the Shares and (B) all reports and other documents filed by Counterparty with the Securities and Exchange Commission pursuant to the Exchange Act when considered as a whole (with the more recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.

(ii) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that BofA is not making any representations or warranties or taking any position or expressing any view with respect to the treatment of the Transaction under any accounting standards including ASC Topic 260, Earnings Per Share, ASC Topic 815, Derivatives and Hedging, or ASC Topic 480, Distinguishing Liabilities from Equity and ASC 815-40, Derivatives and Hedging – Contracts in Entity’s Own Equity (or any successor issue statements) or under FASB’s Liabilities & Equity Project.

(iii) Without limiting the generality of Section 3(a)(iii) of the Agreement, the Transaction will not violate Rule 13e-1 or Rule 13e-4 under the Exchange Act.

(iv) Prior to the Trade Date, Counterparty shall deliver to BofA a resolution of Counterparty’s board of directors authorizing the Transaction and such other certificate or certificates as BofA shall reasonably request. Counterparty has publicly disclosed on each of November 17, 2009 and August 9, 2010 its intention to institute a program for the acquisition of Shares.
(v) Counterparty is not entering into this Confirmation to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act, and will not engage in any other securities or derivative transaction to such ends.

(vi) Counterparty is not, and after giving effect to the transactions contemplated hereby will not be, required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.

(vii) On the Trade Date, the Prepayment Date, the Initial Share Delivery Date and the Settlement Date, Counterparty is not, or will not be, “insolvent” (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the “Bankruptcy Code”)) and Counterparty would be able to purchase the Shares hereunder in compliance with the corporate laws of the jurisdiction of its incorporation.

(viii) No state or local (including non-U.S. jurisdictions) law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) as a result of BofA or its affiliates owning or holding (however defined) Shares.

(ix) Counterparty shall not declare or pay any Dividend (as defined above) to holders of record as of any date occurring prior to the Settlement Date or, if the provisions of Annex A apply, the Cash Settlement Payment Date.

(x) Counterparty understands no obligations of BofA to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any affiliate of BofA or any governmental agency.

(b) Each of BofA and Counterparty agrees and represents that it is an “eligible contract participant” as defined in Section 1a(12) of the U.S. Commodity Exchange Act, as amended.

(c) Each party acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act, by virtue of Section 4(2) thereof. Accordingly, each party represents and warrants to the other that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment, (ii) it is an “accredited investor” as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof, and (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws.

(d) Counterparty agrees and acknowledges that BofA is a “financial institution,” “swap participant” and “financial participant” within the meaning of Sections 101(22), 101(53C) and 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge that it is the intent of the parties that (A) this Confirmation is (i) a “securities contract,” as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “termination value,” “payment amount” or “other transfer obligation” within the meaning of Section 362 of the Bankruptcy Code and a “settlement payment,” within the meaning of Section 546 of the Bankruptcy Code and (ii) a “swap agreement,” as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “termination value,” “payment amount” or “other transfer obligation” within the meaning of Section 362 of the Bankruptcy Code and a “transfer,” as such term is defined in Section 101(54) of the Bankruptcy Code and a “payment or other transfer of property” within the meaning of Sections 362 and 546 of the Bankruptcy Code, and (B) BofA is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 362(o), 546(e), 546(g), 548(d)(2), 555, 560 and 561 of the Bankruptcy Code.

(e) BofA represents, warrants and covenants to Counterparty that it has implemented reasonable policies and procedures, taking into consideration the nature of its business, to ensure that individuals making investment
decisions relating to the Transaction are not aware of material nonpublic information regarding Counterparty or the Shares of which other individuals at BofA may be aware.

(f) BofA agrees with Counterparty that BofA shall not take any action in connection with the Transaction with the intention of manipulating any trading prices of the Shares in violation of the Exchange Act and the rules and regulations thereunder.

8. Agreements and Acknowledgements Regarding Hedging.

Counterparty acknowledges and agrees that:

(a) During the Relevant Period, BofA and its Affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction;

(b) BofA and its Affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction;

(c) BofA shall make its own determination as to whether, when or in what manner any hedging or market activities in Counterparty’s securities shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Settlement Price and/or the VWAP Price; and

(d) Any market activities of BofA and its Affiliates with respect to Shares may affect the market price and volatility of Shares, as well as the Settlement Price and/or the VWAP Price, each in a manner that may be adverse to Counterparty.


(a) If a Transaction Announcement occurs on or prior to the Settlement Date or the Cash Settlement Payment Date, as the case may be, then the Number of Shares to be Delivered shall be determined as if the words “minus (ii) the Discount” had been deleted from the definition thereof. If a Transaction Announcement occurs after the Trade Date but prior to the Scheduled Earliest Acceleration Date, the Scheduled Earliest Acceleration Date shall be adjusted to be the date of such Transaction Announcement.

(b) “Transaction Announcement” means (i) the announcement of an Acquisition Transaction, (ii) an announcement that Counterparty or any of its subsidiaries has entered into an agreement, a letter of intent or an understanding to enter into an Acquisition Transaction, (iii) the announcement of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, an Acquisition Transaction, or (iv) any other announcement that in the reasonable judgment of the Calculation Agent may result in an Acquisition Transaction. For the avoidance of doubt, announcements as used in this definition of Transaction Announcement refer to any public announcement whether made by the Issuer or a third party.

“Acquisition Transaction” means (i) any Merger Event (and for purposes of this definition the definition of Merger Event shall be read with the references therein to “100%” being replaced by “15%” and to “50%” by “75%” and as if the clause beginning immediately following the definition of Reverse Merger therein to the end of such definition were deleted) or Tender Offer, or any other transaction involving the merger of Counterparty with or into any third party, (ii) the sale or transfer of all or substantially all of the assets of Counterparty, (iii) a recapitalization, reclassification, binding share exchange or other similar transaction, (iv) any acquisition, lease, exchange, transfer, disposition (including by way of spin-off or distribution) of assets (including any capital stock or other ownership interests in subsidiaries) or other similar event by Counterparty or any of its subsidiaries where the aggregate consideration transferable or receivable by or to Counterparty or its subsidiaries exceeds 15% of the market capitalization of Counterparty and (v) any transaction in which Counterparty or its board of directors has a legal obligation to make a recommendation to its shareholders in respect of such transaction (whether pursuant to Rule 14e-2 under the Exchange Act or otherwise).
Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If either party would owe the other party any amount pursuant to Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement (a “Payment Obligation”), Counterparty shall have the right, in its sole discretion, to satisfy or to require BofA to satisfy, as the case may be, any such Payment Obligation, in whole or in part, by the Share Termination Alternative (as defined below) by giving irrevocable telephonic notice to BofA, confirmed in writing within one Scheduled Trading Day, no later than 9:30 A.M. New York City time on the Merger Date, Tender Offer Date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable (“Notice of Share Termination”); provided that Counterparty shall not have the right to so elect in the event of (i) an Insolvency, a Nationalization, a Merger Event or a Tender Offer, in each case, in which the consideration or proceeds to be paid to holders of Shares consists solely of cash or (ii) an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party, which Event of Default or Termination Event resulted from an event or events within Counterparty’s control. Upon such Notice of Share Termination, the following provisions shall apply on the Scheduled Trading Day immediately following the Merger Date, Tender Offer Date, Announcement Date, Early Termination Date or date of cancellation or termination in respect of an Extraordinary Event, as applicable, with respect to the Payment Obligation or such portion of the Payment Obligation for which the Share Termination Alternative has been elected (the “Applicable Portion”):

Share Termination Alternative: Applicable and means, if delivery pursuant to the Share Termination Alternative is owed by BofA, that BofA shall deliver to Counterparty the Share Termination Delivery Property on the date on which the Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable, or such later date as the Calculation Agent may reasonably determine (the “Share Termination Payment Date”), in satisfaction of the Payment Obligation or the Applicable Portion, as the case may be. If delivery pursuant to the Share Termination Alternative is owed by Counterparty, paragraphs 2 through 5 of Annex A shall apply as if such delivery were a settlement of the Transaction to which Net Share Settlement (as defined in Annex A) applied, the Cash Settlement Payment Date were the Early Termination Date, the Forward Cash Settlement Amount were zero (0) minus the Payment Obligation (or the Applicable Portion, as the case may be) owed by Counterparty, and “Shares” as used in Annex A were replaced by “Share Termination Delivery Units.”

Share Termination Delivery Property: A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation (or the Applicable Portion, as the case may be) divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.

Share Termination Unit Price: The value of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Unit is to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its good faith discretion by commercially reasonable means and notified by the Calculation Agent to the parties at the time of notification of the Payment Obligation.

Share Termination Delivery Unit: In the case of a Termination Event, Event of Default, Delisting or Additional Disruption Event, one Share or, in the case of an Insolvency, Nationalization, Merger Event or Tender Offer, one Share or a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Insolvency, Nationalization, Merger Event or Tender Offer. If such Insolvency, Nationalization, Merger Event or Tender Offer involves a choice of
consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.

(b) Equity Rights. BofA acknowledges and agrees that this Confirmation is not intended to convey to it rights with respect to the Transaction that are senior to the claims of common stockholders in the event of Counterparty’s bankruptcy. For the avoidance of doubt, the parties agree that the preceding sentence shall not apply at any time other than during Counterparty’s bankruptcy to any claim arising as a result of a breach by Counterparty of any of its obligations under this Confirmation or the Agreement. For the avoidance of doubt, the parties acknowledge that this Confirmation is not secured by any collateral that would otherwise secure the obligations of Counterparty herein under or pursuant to any other agreement.

(c) Staggered Settlement. If BofA would owe Counterparty any Shares pursuant to the “Settlement Terms” above, BofA may, by notice to Counterparty on or prior to the Settlement Date (a “Nominal Settlement Date”), elect to deliver the Shares deliverable on such Nominal Settlement Date on two or more dates (each, a “Staggered Settlement Date”) or at two or more times on the Nominal Settlement Date as follows: (i) in such notice, BofA will specify to Counterparty the related Staggered Settlement Dates (each of which will be on or prior to such Nominal Settlement Date) or delivery times and how it will allocate the Shares it is required to deliver under “Settlement Terms” above among the Staggered Settlement Dates or delivery times; and (ii) the aggregate number of Shares that BofA will deliver to Counterparty hereunder on all such Staggered Settlement Dates and delivery times will equal the number of Shares that BofA would otherwise be required to deliver on such Nominal Settlement Date.

(d) Adjustments. For the avoidance of doubt, whenever the Calculation Agent is called upon to make an adjustment pursuant to the terms of this Confirmation or the Definitions to take into account the effect of an event, the Calculation Agent shall make such adjustment by reference to the effect of such event on the Hedging Party, assuming that the Hedging Party maintains a commercially reasonable hedge position.

(e) Transfer and Assignment. BofA may transfer or assign its rights and obligations hereunder and under the Agreement, in whole or in part, to any of its Affiliates without the consent of Counterparty.

(f) Additional Termination Events.

(i) It shall constitute an Additional Termination Event with respect to which the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party and BofA shall be the party entitled to designate an Early Termination Date pursuant to Section 6 (b) of the Agreement if, at any time during the Relevant Period, the price per Share on the Exchange, as determined by the Calculation Agent, is at or below the Threshold Price (as provided in Annex B to this Confirmation).

(ii) Notwithstanding anything to the contrary in the Equity Definitions, if, as a result of an Extraordinary Event, the Transaction would be cancelled or terminated (whether in whole or in part) pursuant to Article 12 of the Equity Definitions, an Additional Termination Event (with such terminated Transaction (or portion thereof) being the Affected Transaction and Counterparty being the sole Affected Party) shall be deemed to occur, and, in lieu of Sections 12.7, 12.8 and 12.9 of the Equity Definitions, Section 6 of the Agreement shall apply to such Affected Transaction.
Amendments to Equity Definitions. The following amendments shall be made to the Equity Definitions:

(i) Section 11.2(a) of the Equity Definitions is hereby amended by deleting the words “a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “an economic effect on the relevant Transaction”; 

(ii) The first sentence of Section 11.2(c) of the Equity Definitions, prior to clause (A) thereof, is hereby amended to read as follows: ‘(c) If “Calculation Agent Adjustment” is specified as the Method of Adjustment in the related Confirmation of a Share Option Transaction or Share Forward Transaction, then following the announcement or occurrence of any Potential Adjustment Event, the Calculation Agent will determine whether such Potential Adjustment Event has an economic effect on the Transaction and, if so, will (i) make appropriate adjustment(s), if any, to any one or more of: and the portion of such sentence immediately preceding clause (ii) thereof is hereby amended by deleting the words “diluting or concentrative” and the words “(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)” and replacing such latter phrase with the words “(and, for the avoidance of doubt, adjustments may be made to account solely for changes in volatility, stock loan rate or liquidity relative to the relevant Shares)”;

(iii) Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “economic effect on the relevant Transaction”;

(iv) Section 12.6(a) of the Equity Definitions is hereby amended by (1) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, and (2) deleting the semi-colon at the end of subsection (B) thereof and inserting the following words therefor “or (C) at BofA’s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that issuer”;

(v) Section 12.9(b) of the Equity Definitions is hereby amended by (A) deleting (1) subsection (A) in its entirety, (2) the phrase “or (B)” following subsection (A) and (3) the phrase “in each case” in subsection (B); and (B) deleting the phrase “neither the Non-Hedging Party nor the Lending Party lends Shares in the amount of the Hedging Shares or” in the penultimate sentence; and

(vi) Section 12.9(b) of the Equity Definitions is hereby amended by (A) adding the word “or” immediately before subsection “(B)” and deleting the comma at the end of subsection (A); and (B)(1) deleting subsection (C) in its entirety, (2) deleting the word “or” immediately preceding subsection (C) and (3) replacing in the penultimate sentence the words “either party” with “the Hedging Party” and (4) deleting clause (X) in the final sentence.

No Netting and Set-off. Each party waives any and all rights it may have to set off obligations arising under the Agreement and the Transaction against other obligations between the parties, whether arising under any other agreement, applicable law or otherwise.

Disclosure. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

Designation by BofA. Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing BofA to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, BofA (the “Designator”) may designate any of its Affiliates (the “Designee”) to deliver or take delivery, as the case may be, and otherwise perform its obligations to deliver, if any, or take delivery of, as the case may be, any such Shares or other securities in respect of the Transaction, and the Designee may assume such obligations, if any. Such designation shall not relieve the Designator of any of its obligations, if any, hereunder. Notwithstanding the previous sentence, if the Designee shall have performed the obligations, if any, of the Designator hereunder, then the Designator shall be discharged of its obligations, if any, to Counterparty to the extent of such performance.
(k) **Termination Currency**. The Termination Currency shall be USD.

(l) **Waiver of Trial by Jury**. **EACH OF COUNTERPARTY AND BOFA HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TRANSACTION OR THE ACTIONS OF BOFA OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.**

(m) **Governing Law; Jurisdiction**. **THIS CONFIRMATION AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS CONFIRMATION SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS.**

(n) **Counterparts**. This Confirmation may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Confirmation by signing and delivering one or more counterparts.
Please confirm your agreement to be bound by the terms stated herein by executing the copy of this Confirmation enclosed for that purpose and returning it to us by mail or facsimile transmission to the address for Notices indicated above.

Yours sincerely,

BANK OF AMERICA, N.A.

By:   /s/ Jake Mendelsohn

Name:   Jake Mendelsohn
Title:   Managing Director

Confirmed as of the date first above written:

VARIAN MEDICAL SYSTEMS, INC.

By:   /s/ Franco N. Palomba
Name:   Franco N. Palomba
Title:   Vice President Finance and Treasurer

VARIAN MEDICAL SYSTEMS, INC.

By:   /s/ Timothy E. Guertin
Name:   Timothy E. Guertin
Title:   President and Chief Executive Officer
### COUNTERPARTY SETTLEMENT PROVISIONS

1. The following Counterparty Settlement Provisions shall apply to the extent indicated under the Confirmation:

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Settlement Currency:</td>
<td>USD</td>
</tr>
<tr>
<td>Settlement Method Election:</td>
<td>Applicable; provided that (i) Section 7.1 of the Equity Definitions is hereby amended by deleting the word “Physical” in the sixth line thereof and replacing it with the words “Net Share” and (ii) the Electing Party may make a settlement method election only if the Electing Party represents and warrants to BofA in writing on the date it notifies BofA of its election that, as of such date, (A) none of Counterparty and its officers and directors is aware of any material nonpublic information regarding Counterparty or the Shares and (B) Counterparty is electing the settlement method in good faith and not as part of a plan or scheme to evade compliance with the federal securities laws.</td>
</tr>
<tr>
<td>Electing Party:</td>
<td>Counterparty</td>
</tr>
<tr>
<td>Settlement Method Election Date:</td>
<td>Any date on or prior to the date 10 Exchange Business Days prior to the Valuation Date; provided that if BofA accelerates the Final Averaging Date pursuant to the proviso to the definition of Final Averaging Date, the Settlement Method Election Date shall be any date on or prior to the second Exchange Business Day immediately following the Valuation Date.</td>
</tr>
<tr>
<td>Default Settlement Method:</td>
<td>Cash Settlement</td>
</tr>
<tr>
<td>Special Settlement:</td>
<td>Either (i) a settlement to which this Annex A applies that follows the occurrence of a Transaction Announcement to which Section 9 of this Confirmation applies or (ii) any settlement to which paragraphs 2 through 5 of this Annex A apply that follows a termination or cancellation of the Transaction pursuant to Section 6 of the Agreement or Article 12 of the Equity Definitions to which Section 10(a) of this Confirmation applies.</td>
</tr>
<tr>
<td>Forward Cash Settlement Amount:</td>
<td>The Number of Shares to be Delivered multiplied by the Settlement Valuation Price.</td>
</tr>
<tr>
<td>Settlement Valuation Price:</td>
<td>The arithmetic average of the VWAP Prices for all Settlement Valuation Dates, subject to Averaging Date Disruption, determined as if each Settlement Valuation Date were an Averaging Date (with Averaging Date Disruption applying as if the last Settlement Valuation Date were the Final Averaging Date and the Settlement Valuation Price were the Settlement Price).</td>
</tr>
<tr>
<td>Settlement Valuation Dates:</td>
<td>A number of Scheduled Trading Days selected by BofA in its good faith and commercially reasonable discretion, beginning on the Scheduled Trading Day immediately following the later of the Settlement Method Election Date and the Final Averaging Date.</td>
</tr>
<tr>
<td>Cash Settlement:</td>
<td>If Cash Settlement is applicable, then Counterparty shall pay to BofA the absolute value of the Forward Cash Settlement Amount on the Cash Settlement Payment Date.</td>
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2. Net Share Settlement shall be made by delivery on the Settlement Date of a number of Shares equal to the product of 102% and the absolute value of the Number of Shares to be Delivered; *provided* that in the case of a Special Settlement, Net Share Settlement shall be made (i) by delivery on the Cash Settlement Payment Date (such date, the "Net Share Settlement Date") of a number of Shares (the "Restricted Payment Shares") with a value equal to the absolute value of the Forward Cash Settlement Amount, with such Shares’ value based on the realizable market value thereof to BofA (which value shall take into account an illiquidity discount resulting from the fact that the Restricted Payment Shares will not be registered for resale), as determined by the Calculation Agent (the "Restricted Share Value"), and paragraph 3 of this Annex A shall apply to such Restricted Payment Shares, and (ii) by delivery of the Make-Whole Payment Shares as described in paragraph 4 below.

3. (a) All Restricted Payment Shares and Make-Whole Payment Shares shall be delivered to BofA (or any affiliate of BofA designated by BofA) pursuant to the exemption from the registration requirements of the Securities Act provided by Section 4(2) thereof.

(b) As of or prior to the date of delivery, Merrill Lynch, Pierce, Fenner & Smith Incorporated, BofA and any potential purchaser of any such Shares from BofA (or any affiliate of BofA designated by BofA) identified by BofA shall be afforded a commercially reasonable opportunity to conduct a due diligence investigation with respect to Counterparty customary in scope for private placements of equity securities of similar size by similar companies (including, without limitation, the right to have made available to them for inspection all financial and other records, pertinent corporate documents and other information reasonably requested by them), *provided* that any such potential purchaser may be required by Counterparty to enter into a customary nondisclosure agreement with Counterparty in respect of any such due diligence investigation.

(c) As of the date of delivery, Counterparty shall enter into an agreement (a “Private Placement Agreement”) with BofA (or any affiliate of BofA designated by BofA) in connection with the private placement of such Shares by Counterparty to BofA (or any such affiliate) and the private resale of such shares by BofA (or any such affiliate), substantially similar to private placement purchase agreements customary for private placements of equity securities of similar size by similar companies, in form and substance commercially reasonably satisfactory to BofA, which Private Placement Agreement shall include, without limitation, provisions substantially similar to those contained in such private placement purchase agreements relating to the indemnification of, and contribution in connection with the liability of, BofA and its affiliates, and shall provide for the payment by Counterparty of the reasonable fees and actual documented out-of-pocket expenses in connection with such resale, including reasonable fees and expenses of counsel for BofA, and shall contain representations, warranties and agreements of Counterparty reasonably necessary or advisable to establish and maintain the availability of an exemption from the registration requirements of the Securities Act for such resales.

(d) Neither Counterparty nor BofA shall take or cause to be taken any action that would make unavailable either (i) the exemption set forth in Section 4(2) of the Securities Act for the sale of any Restricted Payment Shares or Make-Whole Payment Shares by Counterparty to BofA or (ii) an exemption from the registration requirements of the Securities Act reasonably acceptable to BofA for resales of Restricted Payment Shares and Make-Whole Payment Shares by the BofA (or an affiliate of BofA).

(e) Counterparty expressly agrees and acknowledges that the public disclosure of material information relating to Counterparty is within Counterparty’s control.

4. If Restricted Payment Shares are delivered in accordance with paragraph 3 above, on the last Settlement Valuation Date, a balance (the “Settlement Balance”) shall be established with an initial balance equal to the absolute value of the Forward Cash Settlement Amount.

Following the delivery of Restricted Payment Shares or any Make-Whole Payment Shares, BofA shall sell all such Restricted Payment Shares or Make-Whole Payment Shares in a commercially
reasonable manner. At the end of each Exchange Business Day upon which sales have been made, the Settlement Balance shall be reduced by an amount equal to the aggregate proceeds received by BofA or its affiliate upon the sale of such Restricted Payment Shares or Make-Whole Payment Shares, less a customary and commercially reasonable private placement fee for private placements of common stock by similar issuers. If, on any Exchange Business Day, all Restricted Payment Shares and Make-Whole Payment Shares have been sold and the Settlement Balance has not been reduced to zero, Counterparty shall, in its sole discretion, (i) deliver to BofA or as directed by BofA one Settlement Cycle following such Exchange Business Day an additional number of Shares (the “Make-Whole Payment Shares” and, together with the Restricted Payment Shares, the “Payment Shares”) equal to (x) the Settlement Balance as of such Exchange Business Day divided by (y) the Restricted Share Value of the Make-Whole Payment Shares as of such Exchange Business Day or (ii) promptly deliver to BofA cash in an amount equal to the then remaining Settlement Balance. This provision shall be applied successively until either the Settlement Balance is reduced to zero or the aggregate number of Restricted Payment Shares and Make-Whole Payment Shares equals the Maximum Deliverable Number. If on any Exchange Business Day, Restricted Payment Shares and Make-Whole Payment Shares remain unsold and the Settlement Balance has been reduced to zero, BofA shall promptly return such unsold Restricted Payment Shares or Make-Whole Payment Shares.

5. Notwithstanding the foregoing, in no event shall Counterparty be required to deliver more than the Maximum Deliverable Number of Shares hereunder. “Maximum Deliverable Number” means the number of Shares set forth as such in Annex B to this Confirmation. Counterparty represents and warrants to BofA (which representation and warranty shall be deemed to be repeated on each day from the date hereof to the Settlement Date or, if Counterparty has elected to deliver any Payment Shares hereunder in connection with a Special Settlement, to the date on which resale of such Payment Shares is completed (the “Final Resale Date”)) that the Maximum Deliverable Number is equal to or less than the number of authorized but unissued Shares of Counterparty that are not reserved for future issuance in connection with transactions in such Shares (other than the transactions under this Confirmation) on the date of the determination of the Maximum Deliverable Number (such Shares, the “Available Shares”). In the event Counterparty shall not have delivered the full number of Shares otherwise deliverable as a result of this paragraph 5 (the resulting deficit, the “Deficit Shares”), Counterparty shall be continually obligated to deliver, from time to time until the full number of Deficit Shares have been delivered pursuant to this paragraph, Shares when, and to the extent that, (i) Shares are repurchased, acquired or otherwise received by Counterparty or any of its subsidiaries after the date hereof (whether or not in exchange for cash, fair value or any other consideration), (ii) authorized and unissued Shares reserved for issuance in respect of other transactions prior to such date which prior to the relevant date become no longer so reserved or (iii) Counterparty additionally authorizes any unissued Shares that are not reserved for other transactions. Counterparty shall immediately notify BofA of the occurrence of any of the foregoing events (including the number of Shares subject to clause (i), (ii) or (iii) and the corresponding number of Shares to be delivered) and promptly deliver such Shares thereafter.

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Prepayment Amount: USD 250,000,000
Scheduled Final Averaging Date: February 21, 2012 (or if such date is not an Exchange Business Day, the next following Exchange Business Day).
Scheduled Earliest Acceleration Date: November 23, 2011 (or if such date is not an Exchange Business Day, the next following Exchange Business Day).
Knock-out Level: Not Applicable
Maximum Number of Knock-out Days: 0
Initial Shares: An amount of shares equal to the Prepayment Amount, divided by the closing stock price on the trading day prior to the first Averaging Date, multiplied by 85%.
Discount: [*]
Maximum Stock Loan Rate: [*]
Initial Stock Loan Rate: [*]
Threshold Price: [*]
Maximum Deliverable Number: 10,000,000 Shares

* Confidential material redacted and filed separately with the Securities and Exchange Commission.
AMENDMENT NO. 4 TO AMENDED AND RESTATED CREDIT AGREEMENT

This AMENDMENT NO. 4 TO AMENDED AND RESTATED CREDIT AGREEMENT (this “Amendment”), dated as of August 25, 2011, is entered into by and between VARIAN MEDICAL SYSTEMS, INC., a Delaware corporation (the “Borrower”), and BANK OF AMERICA, N.A. (the “Lender”).

RECITALS

A. The Borrower and the Lender are party to that certain Amended and Restated Credit Agreement dated as of November 10, 2008 (as amended by Amendment to Amended and Restated Credit Agreement dated July 14, 2009, Amendment No. 2 to Amended and Restated Credit Agreement dated August 11, 2010, and Amendment No. 3 to Amended and Restated Credit Agreement dated as of August 24, 2010, as hereby amended and as from time to time further amended, modified, supplemented, restated or amended and restated, the “Credit Agreement”), pursuant to which the Lender has extended certain credit facilities to the Borrower.

B. The Borrower has advised the Lender that, in addition to the Accelerated Share Repurchases previously approved by the Lender, it plans to purchase, redeem or otherwise acquire, through one or more transactions, shares of its common stock through September 30, 2012, pursuant a 12,000,000 share repurchase authorization approved by the Borrower’s board of directors on February 11, 2011 (the “Additional Share Repurchases”); and

C. Under certain circumstances, Section 7.06(d) of the Credit Agreement may not permit all or a portion of the Additional Share Repurchases; and

D. The Borrower has requested that the Lender increase its Commitment by an aggregate amount of $75,000,000 and to extend the Maturity Date; and

E. The Borrower has requested that the Lender consent to the Additional Share Repurchases and amend the Credit Agreement to incorporate the Incremental Commitment and certain other amendments related to the Additional Share Repurchases, and the Lender has agreed to such request, subject to the terms and conditions of this Amendment.

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Defined Terms. Unless otherwise defined herein, capitalized terms used herein shall have the meanings assigned to such terms in the Credit Agreement. As used herein, “Amendment Documents” means this Amendment and each certificate and other document executed and delivered by the Borrower pursuant to Section 5 hereof.

2. Amendments to Credit Agreement. Subject to the covenants, terms and conditions set forth herein and with effect from and after the Effective Date, the Credit Agreement is amended as follows:

1
(a) The definition of “Accelerated Share Repurchase” in Section 1.01 of the Credit Agreement is deleted in its entirety and the following is inserted in lieu thereof:

“Accelerated Share Repurchase” means the purchase, redemption or other acquisition, through one or more transactions, by the Borrower of shares of its common stock during a period ending September 30, 2012, pursuant to a 5,000,000 share repurchase authorization approved by the Borrower’s board of directors on November 13, 2009, an 8,000,000 share repurchase authorization approved by the Borrower’s board of directors on August 6, 2010 and a 12,000,000 share repurchase authorization approved by the Borrower’s board of directors on February 11, 2011.

(b) The definition of “Applicable Rate” in Section 1.01 of the Credit Agreement is amended by deleting the pricing grid therein in its entirety and inserting the following in lieu thereof:

| Pricing Level | Consolidated Leverage Ratio | Committee Fee | Eurodollar Rate/ Letter of Credit Fee+ | Base Rate+
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<td>1</td>
<td>Less than or equal to 0.50:1.00</td>
<td>0.20%</td>
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<td>-0.50%</td>
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<tr>
<td>2</td>
<td>Greater than 0.50:1.00, but less than or equal to 1.00:1.00</td>
<td>0.25%</td>
<td>1.000%</td>
<td>-0.25%</td>
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<tr>
<td>3</td>
<td>Greater than 1.00:1.00</td>
<td>0.30%</td>
<td>1.250%</td>
<td>0.0%</td>
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(c) The definition of “Commitment” in Section 1.01 of the Credit Agreement is amended by deleting the reference to “$225,000,000” in clause (ii) and inserting “$300,000,000” in lieu thereof.

(c) The definition of “Maturity Date” in Section 1.01 of the Credit Agreement is amended by deleting the reference to “November 10, 2011” and inserting “June 30, 2012” in lieu thereof.

3. Limited Consent. Subject to the covenants, terms and conditions set forth herein and in reliance upon the representations and warranties set forth herein, the Lender hereby consents to the Additional Share Repurchases, however effected by the Borrower.

The consent set forth in this Section 3 is limited to the extent specifically set forth above and no other terms, covenants or provisions of the Credit Agreement are intended to be affected hereby.

4. Representations and Warranties. The Borrower hereby represents and warrants to the Lender as follows:

(a) After giving effect to this Amendment, no Default or Event of Default has occurred and is continuing.
(b) The execution, delivery and performance by the Borrower of this Amendment and the other Amendment Documents have been duly authorized by all necessary corporate and other action and do not and will not require any registration with, consent or approval of, or notice to or action by, any Person (including any Governmental Authority) in order to be effective and enforceable.

(c) All representations and warranties of the Borrower contained in Article V of the Credit Agreement are true and correct in all material respects on and as of the Effective Date after giving effect to this Amendment, except to the extent that any such representation and warranty specifically relates to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date after giving effect to this Amendment.

(d) The Borrower is entering into this Amendment on the basis of its own investigation and for its own reasons, without reliance upon the Lender or any other Person.

(e) The obligations of the Borrower under the Credit Agreement and each other Loan Document are not subject to any defense, counterclaim, set-off, right of recoupment, abatement or other claim.

5. Effective Date. This Amendment will become effective on the date on which each of the conditions precedent set forth in this Section 5 has been satisfied (the “Effective Date”):

(i) The Lender shall have received from the Borrower a duly executed original counterpart (or, if elected by the Lender, an executed copy by telex or facsimile or other electronic imaging means (including .PDF)) to this Amendment.

(ii) An Amended and Restated Note in favor of the Lender.

(iii) The Lender shall have received from the Borrower a certificate signed by the secretary or assistant secretary of the Borrower, dated the Effective Date, in form and substance satisfactory to the Lender, and certifying evidence of the authorization of the execution, delivery and performance by the Borrower of this Amendment.

(iv) The Borrower shall have paid the Lender a fee of $150,000 for the Incremental Commitment and the extension of the Maturity Date, which shall fee shall be deemed fully earned when paid and shall be non-refundable.

(v) The Lender shall have received, in form and substance satisfactory to it, such additional approvals, consents, documents and other information as the Lender shall reasonably request.

6. Reservation of Rights. The Borrower acknowledges and agrees that neither the execution nor the delivery by the Lender of this Amendment shall (a) be deemed to create a course of dealing or otherwise obligate the Lender to execute similar amendments, consents or waivers under the same or similar circumstances in the future or (b) be deemed to create any implied waiver of any right or remedy of the Lender with respect to any term or provision of any Loan Document.
7. **Miscellaneous.**

(a) Except as expressly amended or modified hereby, all terms, covenants and provisions of the Credit Agreement are and shall remain in full force and effect and all references therein to such Credit Agreement shall henceforth refer to the Credit Agreement as modified by this Amendment. This Amendment shall be deemed incorporated into, and a part of, the Credit Agreement.

(b) This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. No third party beneficiaries are intended in connection with this Amendment.

(c) **THIS AMENDMENT IS SUBJECT TO THE PROVISIONS OF SECTION 9.13 OF THE CREDIT AGREEMENT RELATING TO GOVERNING LAW, SUBMISSION TO JURISDICTION AND WAIVER OF VENUE AND THE RIGHT TO TRIAL BY JURY, THE PROVISIONS OF WHICH ARE BY THIS REFERENCE INCORPORATED HEREIN IN FULL.**

(d) This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Each of the parties hereto understands and agrees that this document (and any other document required herein) may be delivered by any party hereto or thereto either in the form of an executed original or an executed original sent by telecopier, facsimile or other electronic imaging means (including .PDF) to be followed promptly by mailing of a hard copy original, and the receipt by the Lender of a facsimile transmitted document purportedly bearing the signature of the Borrower or one of the other parties hereto, as applicable, shall bind the Borrower or such other party, respectively, with the same force and effect as the delivery of a hard copy original. Any failure by the Lender to receive the hard copy executed original of such document shall not diminish the binding effect of receipt of the facsimile transmitted executed original of such document of the party whose hard copy page was not received by the Lender.

(e) This Amendment contains the entire and exclusive agreement of the parties hereto with reference to the matters discussed herein. This Amendment supersedes all prior drafts and communications with respect thereto. This Amendment may not be amended except by a written agreement executed by the Borrower and the Lender.

(f) If any term or provision of this Amendment shall be deemed prohibited by or invalid under any applicable law, such provision shall be invalidated without affecting the remaining provisions of this Amendment or the Credit Agreement, respectively.

(g) The Borrower covenants to pay to or reimburse the Lender, upon demand, for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the development, preparation, negotiation, execution and delivery, and enforcement of this Amendment.
(h) This Amendment shall constitute a “Loan Document” under and as defined in the Credit Agreement.

[ Remainder of this page intentionally left blank ]

5
IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the date first above written.

VARIAN MEDICAL SYSTEMS, INC.

By: /s/ Timothy E. Guertin
Name: Timothy E. Guertin
Title: President and Chief Executive Officer

By: /s/ Franco N. Palomba
Name: Franco N. Palomba
Title: Corporate Vice President, Finance and Treasurer

Signature Page 1 to Amendment No.4 to Amended and Restated Credit Agreement
LOAN AND SECURITY AGREEMENT

between

CALIFORNIA PROTON TREATMENT CENTER, LLC,
(Borrower)

and

ORIX CAPITAL MARKETS, LLC,
(Agent)

and

ORIX CAPITAL MARKETS, LLC,
a Delaware limited liability company

and

VARIAN MEDICAL SYSTEMS INTERNATIONAL AG,
a Swiss corporation
(Lenders)

dated

September 30, 2011
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**Schedule, Exhibits and Riders**

- **Schedule 1.2** Definitions
- **Exhibit A** Legal Description
- **Exhibit B** Pending Suits
- **Exhibit C** Material Agreements
- **Exhibit D** Participation Agreements
- **Exhibit E** Note
- **Exhibit F** Form of Assignment and Acceptance Agreement
- **Rider 1.1.4** Extension
- **Rider 10.1(b)** Actions by Agent
THIS LOAN AND SECURITY AGREEMENT (“Agreement”), which is dated as of September 30, 2011, is by and between Borrower, Agent and Lenders, as those terms are defined below, who, in consideration of the mutual covenants, conditions and agreements herein contained, agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Partes and Basic Terms. The terms set forth below, as used in this Agreement, shall have the meanings given them in this Section.

1.1.1 Borrower and Guarantor.
(a) “Borrower” means: California Proton Treatment Center, LLC, a Delaware limited liability company.
(b) “Borrower’s Address” means: 4747 Executive Drive, Suite 590, San Diego, California 92121, Attention: Jeffrey L. Bordok. Facsimile No. (858) 875-2660.
(c) “Borrower’s Counsel” means: Locke Lord Bissell & Liddell LLP, Whit Roberts, Esq.
(d) “Borrower’s Counsel’s Address” means: 2200 Ross Avenue, Suite 2200 Dallas, Texas 75201. Facsimile No. (214) 756-8659.
(e) “Guarantor” means: Collectively, Jeffrey L. Bordok, an individual residing in Minden, Douglas County, Nevada, and James Thomson, an individual residing in Corona del Mar, Orange County, California.

1.1.2 Agent and Lenders.
(a) “Agent” means: ORIX Capital Markets, LLC, a Delaware limited liability company, in its capacity as agent for Lenders, and any successor agent appointed hereunder.
(b) “Lenders” means: ORIX Capital Markets, LLC, a Delaware limited liability company, and Varian Medical Systems International AG, a Swiss corporation, and their successors and assigns, and those other lenders from time to time party hereto (each, a “Lender”).
(c) “Agent’s Address” means: 1717 Main Street, Suite 1100, Dallas, Texas 75201, Attention: Michael J. Moran. Facsimile No. (214) 237-2018.
(d) “Lenders’ Counsel” means: Drinker Biddle & Reath LLP, Michael E. Mermall, Esq.
1.1.3 The Property.

(a) “Facility” means: the Land, the Improvements, the Proton System, and all other equipment, fixtures, machinery and personal property now or hereafter owned by or leased to Borrower.

(b) “Facility Lease” means: That certain Lease and Management Services Agreement by and between Borrower, as lessor, and Provider, as lessee, dated as of June 11, 2010, demising the Facility to Provider.

(c) “Ground Lease” means: That certain Ground Lease by and between Borrower, as lessor, and Ground Lessee, as lessee, dated as of September 30, 2011, demising the Facility to Ground Lessee.

(d) “Ground Sublease” means: That certain Ground Sublease by and between Ground Lessee, as sublessor, and Borrower, as sublessee, dated as of September 30, 2011, demising the Facility to Borrower.

(e) “Improvements” include the following: a to-be-built 103,500 square foot proton radiation treatment center, comprised of five (5) treatment rooms (two fixed-beam rooms and three gantry rooms), as more defined in Schedule 1.2.

(f) “Land” means: The approximately 9.356 acre parcel of land having a common address of 9965 Summers Ridge Road, San Diego, California 92121 and being legally described on attached Exhibit A.

(g) “Project” means: The acquisition of the Land, completion of site work on the Land, the construction and leasing of the Improvements, and the management and operation of the Facility as a proton radiation treatment center.

1.1.4 The Loan.

(a) “Amortization Commencement Date” means: July 1, 2014.

(b) “Amortization Conversion Fee” means: $826,500.

(c) “CapEx Holdback” means: A holdback from the proceeds of the Loan in the amount of $99,121,635.

(d) “Commitment Fee” means: $2,479,500.

(e) “Contingency Holdback” means: A holdback from the proceeds of the Loan in the amount of $2,576,147.
(f) “Default Rate” means: The per annum rate equal to the Interest Rate plus 500 Basis Points.

(g) “Development Fee Holdback” means: A holdback from the proceeds of the Loan in the amount of $1,972,594.

(h) “Exit Fee” means: (a) if a portion of the Loan Amount is prepaid, one percent (1.00%) of the amount prepaid, and (b) if the Loan is paid in full, whether by prepayment or upon maturity, one percent (1.00%) of the entire principal balance of the Loan then outstanding. Agent’s determination of the Exit Fee shall be, absent manifest error, conclusive and binding on Borrower. The Amortization Conversion Fee, if paid by Borrower in accordance with Section 2.3.1(b), shall be credited against the amount of the Exit Fee.

(i) “Holdbacks” means: Collectively, the CapEx Holdback, the Contingency Holdback, the Development Fee Holdback, the Insurance Holdback, the Interest Holdback, the O&M Holdback, the Operating Deficit Holdback, the Pre-Opening Expense Holdback, the Project Working Capital Holdback, the Real Estate Tax Holdback and the Working Capital Holdback, each a “Holdback”.

(j) “Initial Disbursement” means: The amount determined solely by Agent based upon the Loan Budget and approved closing costs and disbursements.

(k) “Insurance Holdback” means: A holdback from the proceeds of the Loan in the amount of $958,193.

(l) “Interest Holdback” means: A holdback from the proceeds of the Loan in the amount of $13,749,726.

(m) “Interest Rate” means: A per annum rate equal to LIBOR plus 625 Basis Points, except that during any Extension Term, the Interest Rate shall be a per annum rate equal to LIBOR plus 700 Basis Points; provided at no time shall the Interest Rate ever be less than eight and twenty-five hundredths percent (8.25%) per annum, and further provided that at no time during any Extension Term shall the Interest Rate ever be less than nine percent (9.00%) per annum. The Interest Rate shall be adjusted on the first day of each calendar month based upon LIBOR in effect on the second to last Business Day of the preceding month, except that if the last day of such month is a day on which The Wall Street Journal is not published or a day on which LIBOR is not published in The Wall Street Journal, then LIBOR for that month shall be LIBOR as published on the immediately preceding day on which The Wall Street Journal is published, provided that if The Wall Street Journal is no longer available as a source for determination of LIBOR, LIBOR will be determined from another readily available source selected by Agent in its sole discretion. In the event that no LIBOR shall be published, Agent (in its sole discretion) may substitute another rate approximating the LIBOR (which substitute rate may be reasonably adjusted by Agent) to the effect that such substitute rate will provide for an interest rate equivalent to the Interest Rate which would have been effective if the LIBOR were quoted, as determined by Agent (in its sole discretion). Agent’s determination of the Interest Rate shall be, absent manifest error, conclusive and binding on Borrower and each Lender.

(n) “Loan Amount” means: $165,300,000
(o) “Loan Budget” means: The sources and uses of the Loan Amount set forth on Exhibit A to the Closing Certificate of Borrower.

(p) “Maturity Date” means: September 30, 2015, subject to extension according to the terms of Rider 1.1.4 attached to this Agreement.

(q) “Minimum Amortization Payment” means: On each Scheduled Payment Date, an amount determined by Agent equal to the amount of principal that would be payable on the Amortization Commencement Date and each subsequent Scheduled Payment Date in order to amortize the outstanding principal balance of the Loan as of the Amortization Commencement Date over a 15 year period assuming an interest rate of eight and one-quarter percent (8.25%) per annum compounded monthly and assuming a 360 day year. Agent’s determination of the Minimum Amortization Payment shall be, absent manifest error, conclusive and binding on Borrower.

(r) “Minimum Interest Lookback Amount” means: (A) if a portion of the Loan Amount is prepaid on or before the Amortization Commencement Date, an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid from the Closing Date through and including the Amortization Commencement Date at the Interest Rate then in effect on the date of any such prepayment, over (ii) the actual amount of interest paid to Lenders in respect of the amount so prepaid, and (B) if the Loan is prepaid in full on or before the Amortization Commencement Date, an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the Loan Amount from the Closing Date through and including the Amortization Commencement Date at the Interest Rate then in effect on the date of any such prepayment, over (ii) the actual amount of interest paid to Lenders in respect of the Loan, less any amounts previously paid to Lenders as a Minimum Interest Lookback Amount pursuant to (A) above in connection with any previous prepayments. For purposes of determining the Minimum Interest Lookback Amount, only monthly interest paid at the Interest Rate shall be taken into account; no fees (including the Commitment Fee, the Amortization Conversion Fee and the Exit Fee), interest at the Default Rate in excess of the Interest Rate, late charges or similar charges or other amounts shall be included in the determination of the actual amount of interest paid. Agent’s determination of the Minimum Interest Lookback Amount shall be, absent manifest error, conclusive and binding on Borrower.

(s) “O&M Holdback” means: A holdback from the proceeds of the Loan in the amount of $655,289.

(t) “Operating Deficit Holdback” means: A holdback from the proceeds of the Loan in the amount of $2,421,571.

(u) “Pre-Opening Expense Holdback” means: A holdback from the proceeds of the Loan in the amount of $6,098,041.

(v) “Project Working Capital Holdback” means: A holdback from the proceeds of the Loan in the amount of $2,340,601.

(w) “Real Estate Taxes Holdback” means: A holdback from the proceeds of the Loan in the amount of $6,949,434.
(x) “Working Capital Holdback” means: A holdback from the proceeds of the Loan in the amount of $9,300,000, as may be increased pursuant to the terms of Section 2.2.2 or decreased pursuant to the terms of the last grammatical paragraph of Section 2.6.

1.1.5 Third Parties.

(a) “Broker” means: Collectively, Signet Development, Ltd., WFG Health Ventures, LLC and Cascada Capital.

(b) “General Contractor” means: The Haskell Company, a Delaware corporation.

(c) “Ground Lessee” means: ORIX Proton San Diego, LLC, a Delaware limited liability company.

(d) “Proton Equipment Vendor” means: Varian Medical Systems, Inc. or any other vendor approved by Agent.

(e) “Provider” means: Scripps Clinic Medical Group, Inc., a California professional medical corporation.

(f) “Title Company” means: Stewart Title Guaranty Company.

1.2 Additional Definitions. Schedule 1.2 attached to this Agreement sets forth additional defined terms and such terms are hereby incorporated in this Agreement and expressly made a part of this Agreement by this reference.

ARTICLE 2
TERMS OF THE LOAN

2.1 Agreement to Lend and Borrow. Subject to and upon the terms and conditions set forth in this Agreement, Lenders agree to lend to Borrower and Borrower agrees to borrow from Lenders, from time to time, such sums as may be requested by Borrower, the total of which shall not exceed the Loan Amount to be used, as provided in this Agreement in conformance with the Loan Budget. Each and every of the obligations of Lenders under this Agreement are several, and no Lender shall be responsible in any case, event or circumstance for the failure of any other Lender to fund any portion of an Advance required to be funded by such other Lender.

2.2 Loan Disbursements.

2.2.1 Initial Disbursement. Upon satisfaction of all applicable conditions set forth in Section 3.1, each Lender will advance its Pro Rata Share of the Initial Disbursement. The actual amount of the Initial Disbursement shall be determined by Agent based on the Loan Budget. Borrower shall give Agent not less than four (4) Business Days prior written notice of the date Borrower desires to receive the Initial Disbursement.
2.2.2 **Holdbacks**. Advances from the Holdbacks shall be available for disbursement upon satisfaction of the applicable terms and conditions of this Agreement. Advances from each of the Holdbacks shall not exceed the amount of the applicable Holdback as set forth in Section 1.1 of this Agreement. Subject to Section 3.2.5, Borrower shall not, in the absence of prior written approval from Agent given in Agent’s sole and absolute discretion, reallocate funds in the Project Budget from one line item to another line item or from one Holdback to another Holdback. Notwithstanding anything contained herein to the contrary, commencing on the Amortization Commencement Date and except for the Working Capital Holdback, the Development Fee Holdback and the O&M Holdback, Borrower shall have no further right to request or receive any Advances from any other Holdback, and except for the Working Capital Holdback, the Development Fee Holdback and the O&M Holdback, Lenders shall have no further obligation to make any Advances from any other Holdback; provided that on the Amortization Commencement Date any undisbursed amounts of the Operating Deficit Holdback and the Pre-Opening Expense Holdback, if any, may, at Borrower’s written request, be allocated to the Working Capital Holdback.

(a) Lenders shall make Advances to themselves from the Interest Holdback solely for the payment of Accrued Interest in an aggregate amount equal to the Monthly Interest Deficiency, and, to the extent Revenues are insufficient therefor, the payment of the Amortization Conversion Fee and the Exit Fee.

(b) Lenders shall make Advances from the CapEx Holdback solely to pay for Approved CapEx Expenses.

(c) Lenders shall make Advances from the Insurance Holdback solely to pay Monthly Insurance Deposits and Premiums next due and payable to the extent Revenues are insufficient therefor.

(d) Lenders shall make Advances from the Real Estate Taxes Holdback solely to pay Monthly Tax Deposits and Impositions next due and payable to the extent Revenues are insufficient therefor.

(e) Lenders shall make Advances from the Development Fee Holdback for the payment to Borrower (or at Borrower’s direction) of a development fee (the “**Development Fee**”); provided, however, that any such Advances of the Development Fee Holdback to pay the Development Fee shall be subject to the following terms and conditions: (i) as part of the Initial Disbursement, there shall be an Advance from the Development Fee Holdback in the amount of $500,000; (ii) Borrower shall have the right to request an Advance from the Development Fee Holdback equal to $500,000 upon Agent’s confirmation that the second (2nd) payment milestone described in Appendix 2-B of the Proton System Purchase Agreement (extraction of beam from the cyclotron after installation in the Improvements) has been satisfied; (iii) Borrower shall have the right to request an Advance from the Development Fee Holdback equal to $500,000 upon Agent’s receipt of written certification from each of Borrower and the Proton Equipment Vendor that the Proton System is fully installed and operational in all respects (subject to the written confirmation of the Construction Consultant) and that Final Acceptance has occurred; (iv) Borrower shall have the right to request an Advance from the Development Fee Holdback equal to $359,857 at such time that, in any twelve (12) month period, at least 18,000 treatment
fractions have been performed at the Facility; and (v) Borrower shall have the right to request an Advance from the Development Fee Holdback equal to the remaining undisbursed amount of the Development Fee Holdback at such time that, in any twelve (12) month period, at least 48,000 treatment fractions have been performed at the Facility, and, at such time and in addition to the undisbursed funds remaining in the Development Fee Holdback, Borrower shall have the right to request an Advance from the undisbursed funds remaining in the Contingency Holdback, if any, in an amount up to $1,500,000.

(f) Subject to the terms and provisions of Section 2.5.2, Lenders shall make a single Advance from the Operating Deficit Holdback solely to deposit the Operating Deficit Escrow Funds in the Operating Deficit Escrow Account as and when required under the Facility Lease and prior to delinquency under the Facility Lease, to the extent Revenues are insufficient therefor.

(g) Subject to the terms and provisions of Section 2.5.2, Lenders shall make a single Advance from the Pre-Opening Expense Holdback solely to deposit the Pre-Opening Escrow Funds in the Pre-Opening Expenses Escrow Account as and when required under the Facility Lease and prior to delinquency under the Facility Lease, to the extent Revenues are insufficient therefor.

(h) Subject to the terms and provisions of Section 2.5.2, Lenders shall make a single Advance from the Working Capital Holdback solely to deposit the Minimum Working Capital Amount in the Working Capital Escrow Account as and when required under the Facility Lease and prior to delinquency under the Facility Lease, to the extent Revenues are insufficient therefor.

(i) Lenders shall make Advances from the Contingency Holdback upon written request from Borrower, and with such accompanying documentation as Agent shall request, for the purpose of paying certain costs and expenses relating to the Project approved by Agent. Notwithstanding the foregoing, any amounts reallocated to the Contingency Holdback pursuant to Section 3.2.5 from line items constituting “soft costs” may be used only for “soft costs” relating to the Project, as reasonably determined by Agent.

(j) Lenders shall make Advances from the O&M Holdback solely to pay the Support Services Fees next due and payable to the extent Revenues and amounts then held in the O&M Reserve, if any, are insufficient therefor.

(k) Lenders shall make Advances from the Project Working Capital Holdback solely to pay Eligible Expenses to the extent Revenues are insufficient therefor.

2.3 Payments.

2.3.1 Interest and Principal.

(a) The principal balance of the Loan shall bear interest at the Interest Rate or, as applicable, the Default Rate. Interest shall accrue on the principal balance of the Loan, from time to time, based on a 360 day year and charged for the actual number of days outstanding. Commencing on the first Scheduled Payment Date, and on or before each Scheduled Payment
Date thereafter, Borrower shall pay to Agent, for the benefit of Lenders, in arrears, all Accrued Interest, and commencing on the first Scheduled Payment Date after the Amortization Commencement Date, and on or before each Scheduled Payment Date thereafter, Borrower shall pay to Agent, for the benefit of Lenders, in arrears, all Accrued Interest and the Minimum Amortization Payment.

(b) Borrower shall pay to Agent, for the benefit of Lenders, the Amortization Conversion Fee on the Amortization Commencement Date.

(c) Borrower shall pay to Agent, for the benefit of Lenders, all Indebtedness, including the entire outstanding principal balance of the Loan, all Accrued Interest, the Exit Fee, the Amortization Conversion Fee (if not yet paid) and the Minimum Interest Lookback Amount (if any) on the Maturity Date.

(d) Following the occurrence of an Event of Default, interest shall be computed at, and Borrower shall pay interest on the unpaid principal balance of the Loan at, the Default Rate. All other payments, reimbursements and other amounts due from Borrower to Lenders under the Loan Documents not paid when due shall bear interest at the Default Rate from the date when due until the date when received by Agent. Acceptance by Agent and payment by Borrower of interest at the Default Rate is not a permitted alternative to the full and timely payment of all amounts due and payable under the Loan Documents, shall not be construed as an agreement or privilege to extend the date of payment of the Indebtedness and shall not act as or constitute a cure of any Default or Event of Default and shall not limit or prejudice Agent’s or Lenders’ rights and remedies with respect to any such Default or Event of Default.

(e) Upon not less than thirty (30) days prior written notice to Agent, Borrower may prepay the Loan on any Scheduled Payment Date in whole or in part; provided that (1) if the principal amount is being prepaid in part, Borrower shall also pay to Agent, for the benefit of Lenders, the Minimum Interest Lookback Amount on such prepaid amount (if any) and the proportionate amount of the Exit Fee, and (2) upon any payment of the entire principal balance of the Loan, all other Indebtedness, including all Accrued Interest, the Minimum Interest Lookback Amount (if any), and the Exit Fee (if any) shall also be paid to Agent, for the benefit of Lenders, in full. Such notice shall specify the amount to be prepaid and the date on which such prepayment shall occur. All prepayments (other than mandatory prepayments, those described in Section 2.6 or a payment of the entire Loan balance) shall be in increments of $25,000.

(f) Unless otherwise specified in this Agreement, all amounts payable to Agent or any Lender shall be due and payable within ten (10) days after request or invoice.

2.3.2 Place and Manner of Payment; Application of Payments

(a) The payment of all amounts due under this Agreement and the other Loan Documents shall be deemed received only when actually received by Agent in Dallas, Texas and shall be made in immediately available U.S. funds (or if Agent so elects, shall be made by ACH from the Blocked Account or other depository account approved by Agent). Payments received after 11:00 a.m. in said location shall be deemed received on the next day Agent is open for
business. All such payments shall be made irrespective of, and without any deduction, set-off or counterclaim whatsoever and are payable without relief from valuation and appraisement laws and with all costs and charges incurred in the collection or enforcement thereof, including attorneys’ fees and court costs.

(b) Agent will distribute or cause to be distributed to each Lender in same day funds (if Agent is in receipt of immediately available funds prior to 11:00 a.m. in Dallas, Texas on a Business Day, otherwise, the next day Agent is open for business) such Lender’s Pro Rata Share of the payments of principal and interest, and its Pro Rata Share of the payments of other sums, in like funds for the account of such Lender (if Agent subsequently determines that it distributed to a Lender an amount in excess of that Lender’s Pro Rata Share of any payment, Agent shall so notify such Lender and such Lender shall promptly refund such excess); provided, however, that Agent shall have the right to deduct from amounts due a Lender in default under its obligations under Section 10.5 the amount owing by such Lender pursuant to said Section 10.5 (which shall include, without limitation, interest and other charges as described in the Loan Documents) and pay the amount so deducted to itself, the other Lenders, or such other party as is entitled to such amount, as applicable. If a court of competent jurisdiction orders, at any time, that any amount received or collected in respect of the Loan must, pursuant to any insolvency, bankruptcy, fraudulent conveyance, preference or similar law, be returned to Borrower or other Borrower Party or paid to any other Person, then, notwithstanding any other provision of this Agreement, Agent shall not be required to distribute any portion thereof to Lenders and each Lender shall promptly on demand by Agent repay to Agent any portion thereof that Agent shall have theretofore distributed to such Lender together with any fees, charges or interest thereon at such rate, if any, as Agent shall have been required (or entitled, in the case of itself) to pay to Borrower or such other Person with respect thereto, without setoff, counterclaim or reduction of any kind. Acceptance by Agent of payments in other than immediately available funds or by ACH shall not constitute a waiver by Agent of its rights to insist that any subsequent payment be made in immediately available funds or by ACH. All amounts due from Borrower or any Borrower Party under the Loan Documents shall be payable without setoff, counterclaim or any other deduction whatsoever.

(c) Except as provided above in this Section and in Section 10.16, each Lender’s interest in the Loan relative to the receipt of payments shall be of equal priority with the interest of each other Lender.

(d) Each borrowing of proceeds of the Loan and each payment or prepayment by Borrower with respect to principal, interest, fees or other amounts due and owing from Borrower hereunder to Lenders shall (except as to certain fees) be made in accordance with each Lender’s Pro Rata Share, but Borrower shall not be required to break down and make separate payments or prepayments of principal, interest or other amounts due and owing to each of the individual Lenders, and instead shall aggregate and remit payments or prepayments to Agent only, who shall then be solely responsible for allocating and distributing the aggregate amount so received from Borrower among the individual Lenders in accordance with their respective Pro Rata Shares. Borrower’s remitting payment to Agent in such manner shall constitute payment to all Lenders for all purposes under the Notes and the other Loan Documents.
2.3.3 **Late Payment Fee.** If any payment due on any Scheduled Payment Date or any other amount due hereunder is not made within five (5) days of the Scheduled Payment Date, or, as applicable, five (5) days (or such earlier time as may be specified herein) after request for payment by Agent, Agent, at its option and in addition to any other remedy available to Lenders, may impose a late payment fee, for the account of Lenders, in order to defray the expense incurred in handling and processing such delinquent payment and to compensate Lenders for the loss of the use of such delinquent payment, which Borrower covenants to pay upon demand calculated at the rate of five percent (5%) of the amount of such delinquent payment or deposit. Without limiting the foregoing, any late payment fee shall be paid without prejudice to the right of Agent or Lenders to collect any other amounts provided to be paid upon an Event of Default, including without limitation any other amounts due at the Default Rate, or to declare a default hereunder under any of the other Loan Documents, or exercise any other available right or remedy.

2.4 **Legal Interest.**

2.4.1 **Savings.** In the event the interest (including, without limitation, at the Default Rate) or other payments required to be made under the Loan Documents or otherwise, shall at any time exceed the Legal Limits, all such sums paid by Borrower or any guarantor(s) or indemnitor(s) for the period in question that exceed the Legal Limits, automatically and without further documentation or action by Borrower, any guarantor(s) or indemnitor(s) or Lenders, shall be applied to the Indebtedness, in such order and manner as Agent may elect, but only to the extent that it does not violate the Legal Limits, or if the Indebtedness has been repaid in full and Borrower and Guarantor have performed and satisfied all of the other Obligations, then each Lender shall refund its Pro Rata Share of any such excess to Borrower. In no event whatsoever shall the amount of interest paid or agreed to be paid to Lenders pursuant to this Agreement, the Notes or any of the other Loan Documents exceed the Legal Limits. Neither Borrower nor any guarantor, endorser or surety nor their heirs, legal representatives, successors or assigns shall have any action against Agent or Lenders for any damages whatsoever arising out of the payment or collection of any amounts that exceed the Legal Limits, and all such claims and causes of action are hereby indefeasibly waived and released.

2.4.2 **Default Interest; Late Payment Fee.** Borrower acknowledges that the occurrence of any Event of Default will (a) require Agent and Lenders to incur additional expense in servicing and administering the Loan, and (b) result in loss to Lenders of the use of the money due and impede Lenders in meeting its other financial and loan commitments. Borrower further acknowledges that the damages caused thereby will be extremely difficult and impractical to ascertain. Accordingly, Borrower agrees that (i) any late payment fee and/or Default Interest imposed on Borrower under this Agreement is not a penalty but represents the reasonable estimate of Agent, Lenders and Borrower of a fair compensation for the loss that may be sustained by Agent and Lenders due to the failure of Borrower to make timely payments, and (ii) the accrual of interest at the Default Rate is a reasonable estimate of the damage to Agent and Lenders in the event of such default, regardless of whether there has been acceleration of the Indebtedness.
2.5 Deposits and Reserves.

2.5.1 Tax and Insurance Deposits. On or before the Closing Date Borrower shall (a) pay all Impositions and Premiums then due and payable or due and payable within sixty (60) days after the Closing Date and (b) deposit with Agent, for the benefit of Lenders, an amount sufficient, when added to the Monthly Tax Deposits and Monthly Insurance Deposits to be collected prior to the dates when Impositions and Premiums next become due and payable, to pay such Impositions and Premiums no less than sixty (60) days in advance. On each Scheduled Payment Date, Borrower shall deposit with Agent, for the benefit of Lenders, the Monthly Tax Deposit and the Monthly Insurance Deposit. Provided no Event of Default exists and all terms and conditions of this Agreement relative to the making of Advances have been satisfied, Borrower shall be entitled to Advances of the Insurance Holdback and the Real Estate Taxes Holdback to make the payments required under this Section 2.5.1, but only to the extent that Revenues available in accordance with Section 2.6 are insufficient to make such payments.

2.5.2 Facility Lease Escrow Accounts. On the Closing Date, Borrower shall establish with Agent (or Agent’s designee) the Operating Deficit Escrow Account, the Pre-Opening Expenses Escrow Account and the Working Capital Escrow Account (collectively, the “Escrow Accounts” and each, an “Escrow Account”), into which funds shall be subsequently deposited therein in accordance with this Agreement. Each of the Escrow Accounts shall be established as a separate non-interest bearing account with Agent (or Agent’s designee) which shall not be commingled with other funds of Agent. Agent (or Agent’s designee) shall also establish subaccounts of each of the Escrow Accounts which shall be ledger or book entry accounts (such subaccounts are referred to herein as “Subaccounts” and each, a “Subaccount”). All Revenues available pursuant to Section 2.6 shall be used to fund the Subaccount for the Operating Deficit Escrow Account in an amount equal to the Operating Deficit Escrow Funds, the Subaccount for the Pre-Opening Expenses Escrow Account in an amount equal to the Pre-Opening Escrow Funds, and the Subaccount for the Working Capital Escrow Account in an amount equal to the Minimum Working Capital Amount, in each instance regardless of whether the Facility Lease then requires such funding (provided, however, that after such time as any such Escrow Account has been funded in accordance with the terms set forth below, Revenues available pursuant to Section 2.6 that would otherwise be used fund the Subaccount for any such previously funded Escrow Account shall instead be used to fund any such Escrow Account directly). Borrower shall provide written notice to Agent, no later than five (5) Business Days prior to the date that each Escrow Account is required to be established pursuant to the Facility Lease and the amount required to be deposited therein (each, an “Escrow Funding Notice”). Provided that so long as no Default, Event of Default or Cash Trap Event shall have occurred and be continuing, Agent (or Agent’s designee) shall, prior to the required funding date set forth in any such Escrow Funding Notice, transfer all funds contained in the applicable Subaccount into the applicable Escrow Account. Notwithstanding the foregoing, as and when required under the Facility Lease and prior to delinquency under the Facility Lease, and after taking into account all funds then on deposit therein and in the applicable Subaccount, Borrower shall deposit with Agent (or Agent’s designee) for immediate deposit by Agent in the applicable Escrow Account (i) the Operating Deficit Escrow Funds required to be held in the Operating Deficit Escrow Account, (ii) the Pre-Opening Escrow Funds required to be held in the Pre-Opening Expenses Escrow Account, and (iii) the Minimum Working Capital Amount required to be held in the Working Capital Escrow.
Account (Borrower agrees that it shall not elect to deliver to Provider the Working Capital Letter of Credit described in Section 5.7 of the Facility Lease). Subject to Borrower’s satisfaction of all the terms and conditions contained herein relating to Advances and provided that Borrower delivers to Agent such accompanying documentation as Agent shall request, Borrower shall be entitled to (1) a single Advance of the Operating Deficit Holdback to cause the then existing balance of the Operating Deficit Escrow Account (and/or its Subaccount) to contain all of the Operating Deficit Escrow Funds when required under the Facility Lease, (2) a single Advance of the Pre-Opening Expense Holdback to cause the then existing balance of the Pre-Opening Expenses Escrow Account (and/or its Subaccount) to contain all of the Pre-Opening Escrow Funds at any time prior to when such funds are required under the Facility Lease, and (3) a single Advance of the Working Capital Holdback to cause the then existing balance of the Working Capital Escrow Account (and/or its Subaccount) to contain all of the Minimum Working Capital Amount when required under the Facility Lease. To the extent required under the Facility Lease, Revenues available pursuant to Section 2.6 shall be used to fund all additional amounts of the Operating Deficit Escrow Funds, Pre-Opening Escrow Funds and Minimum Working Capital Amount as and when required, and prior to delinquency, under the Facility Lease, and to the extent that Revenues available pursuant to Section 2.6 are insufficient to fully fund all such additional amounts, Borrower shall deposit with Agent for immediate deposit by Agent in the applicable Escrow Account, all such additional amounts as and when required, and prior to delinquency, under the Facility Lease. For the avoidance of doubt and notwithstanding anything contained in this Agreement to the contrary, until such time as Agent (or Agent’s designee) shall have transferred funds contained in a Subaccount into the applicable Escrow Account pursuant to an Escrow Funding Notice, prior to the date that each Escrow Account is required to be established and funded pursuant to the Facility Lease, all funds deposited with or paid to Agent pursuant to this Section 2.5.2 (including, without limitation, any Advance from any Holdback designated for the funding of any Escrow Account) or Section 2.6 with respect to the establishment, funding or replenishment of any Escrow Account shall be held in the Subaccount for the applicable Escrow Account and shall not be held directly in the applicable Escrow Account.

Provided that all conditions set forth in the Facility Lease with respect to the disbursement of funds held in the applicable Escrow Account have been satisfied and that Borrower delivers to Agent such accompanying documentation as Agent shall request:

(a) funds held in the Operating Deficit Escrow Account shall be disbursed into the Operating Account within three (3) Business Days of Borrower’s request for the purpose of paying certain costs and expenses relating to the Project in accordance with Section 5.6 of the Facility Lease, provided, however, that if any disbursement from the Operating Deficit Escrow Account causes the then remaining funds in the Operating Deficit Escrow Account to be less than the Minimum Working Capital Amount, Borrower shall immediately deposit with Agent, for immediate deposit by Agent in the Operating Deficit Escrow Account, all additional amounts necessary to keep and maintain an amount not less than the Minimum Working Capital Amount in the Operating Deficit Escrow Account;

(b) funds held in the Pre-Opening Expenses Escrow Account shall be paid to Borrower or disbursed into the Operating Account (as applicable and in accordance with Section 5.9 of the Facility Lease) within three (3) Business Days of Borrower’s request for the purpose...
of paying certain costs and expenses relating to the Project in accordance with Section 5.9 of the Facility Lease; and

(c) funds held in the Working Capital Escrow Account shall be disbursed into the Operating Account within three (3) Business Days of Borrower’s request for the purpose of paying certain costs and expenses relating to the Project in accordance with Section 5.7.1 of the Facility Lease, provided, however, that if any disbursement from the Working Capital Escrow Account would cause the then remaining funds in the Working Capital Escrow Account to be less than the Minimum Working Capital Amount, Borrower shall immediately deposit with Agent, for immediate deposit by Agent in the Working Capital Escrow Account, all additional amounts necessary to keep and maintain an amount not less than the Minimum Working Capital Amount in the Working Capital Escrow Account.

2.5.3 Replacement Reserve. Beginning on the first Scheduled Payment Date after March 1, 2013 and on each Scheduled Payment Date thereafter, Borrower shall deposit with Agent in immediately available funds, one-twelfth (1/12) of the Replacement Reserve Amount, which Agent shall hold as the Replacement Reserve. Subject to Borrower’s satisfaction of all the terms and conditions contained herein relating to Advances, Borrower, at its option, may request an Advance from the Replacement Reserve to pay for costs and expenses incurred by Borrower in connection with capital improvements, repairs and replacements performed at the Property, such Advance to be approved by Agent.

2.5.4 Marketing Reserve. Beginning on the first Scheduled Payment Date after March 1, 2013 and on each Scheduled Payment Date thereafter, Borrower shall deposit with Agent in immediately available funds, one-twelfth (1/12) of the Marketing Reserve Amount, which Agent shall hold as the Marketing Reserve. Subject to Borrower’s satisfaction of all the terms and conditions contained herein relating to Advances, Borrower, at its option, may request an Advance from the Marketing Reserve to pay for costs and expenses incurred by Borrower in connection with the marketing, advertising and promotion of the Facility, such Advance to be approved by Agent, such approval not to be unreasonably withheld, conditioned or delayed.

2.5.5 Collateral Reserve. The Collateral Reserve shall be established as described in Section 2.6 and all funds held therein shall be held by Agent for the benefit of Lenders during the term of the Loan as additional collateral for the Indebtedness and shall not be available for Advances or disbursement to Borrower, except as specifically provided in Section 2.6.

2.5.6 O&M Reserve. The O&M Reserve shall be established as described in Section 2.6 and all funds held therein shall be held by Agent for the benefit of Lenders during the term of the Loan as additional collateral for the Indebtedness. On the Scheduled Payment Date immediately preceding the Support Service Start Date and on each Scheduled Payment Date thereafter, Borrower shall deposit with Agent, for the benefit of Lenders, the Monthly O&M Deposit to be held in the O&M Reserve. Provided that so long as no Default or Event of Default shall have occurred and be continuing, the O&M Reserve will be used for the payment of the Support Services Fees next due and payable and all other amounts that Borrower is required to pay pursuant to the O&M Agreement when they become due. Upon demand by Agent, Borrower shall deliver and pay over to Agent from time to time such additional sums to be held in the...
O&M Reserve as are necessary to make up any deficiency in the amount necessary, as determined by Agent, to enable Agent to fully pay the Support Services Fees and all other amounts that Borrower is required to pay pursuant to the O&M Agreement as they become due and payable.

2.5.7 **Holding of Deposits, Security Interest.** All Deposits shall be held without any allowance of interest and may be commingled with other funds of Agent, except as specifically provided in this Agreement. At its sole election, Agent may cause all or a portion of the Deposits to be held by a depository designated by Agent in one or more accounts. A security interest within the meaning of the Code is hereby granted to Agent, for the benefit of Lenders, in and to all Deposits and all of Borrower’s right, title and interest therein are hereby assigned to Agent, for the benefit of Lenders, all as additional security for the Indebtedness and shall not be subject to the direction or control of Borrower. Agent shall not be liable for any failure to apply any Deposit or make any disbursement provided herein, in the absence of gross negligence or willful misconduct of Agent. Agent shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party. In the event of an Event of Default, Agent may at its option, without being required to do so, apply any portion of the Deposits, other than unforfeited tenant security deposits, to pay Indebtedness, including Charges, in such order and manner as Agent may elect. To the extent Deposits are used to pay Indebtedness, Borrower shall immediately upon demand by Agent, deposit with Agent an amount equal to the amount so used to replenish the funds held as such Deposit.

2.5.8 **Use of Tax and Insurance Deposits.** Provided no Default or Event of Default then exists, the Monthly Tax Deposits and the Monthly Insurance Deposits will be used for the payment of the Impositions and Premiums next due and payable when they become due. Upon demand by Agent, Borrower shall deliver and pay over to Agent from time to time such additional sums or such additional security as are necessary to make up any deficiency in the amount necessary, as determined by Agent, to enable Agent to fully pay the Impositions and Premiums as they become due and payable. If the funds so deposited exceed the amount required to pay Impositions and Premiums for any year, the excess shall be applied to subsequent Monthly Tax Deposits, as determined by Agent.

2.6 **Blocked Account.** No later than two (2) Business Days after Borrower’s receipt thereof, Borrower will cause all Revenues to be deposited into the Blocked Account and shall give irrevocable notices to Provider and other account debtors of Borrower or the Property to make all payments directly to the Blocked Account (and Borrower shall cause Provider to directly deposit those payments described in Sections 9(a)(i)(2), 9(a)(i)(3), 9(a)(i)(4)(ii) and 9(a)(i)(5) of the Multi-Party Agreement directly into the Blocked Account in accordance with the Multi-Party Agreement and shall not give any direction to Provider that is inconsistent with the foregoing). Prior to the occurrence of a Cash Trap Event and so long as no Cash Trap Event is continuing, each month Agent will disburse funds from the Blocked Account (by ACH or otherwise) in the following order of priority:

(a) first, to pay any unpaid Charges;

(b) next, subject to Borrower’s rights under Section 2.2.2(c) and (d), to Agent to make the required amount of the Monthly Tax Deposits and the Monthly Insurance Deposit;
(c) next, subject to Borrower’s rights under Section 2.2.2(j), commencing the month immediately preceding the Support Service Start Date and thereafter, to Agent in the amount of the required Monthly O&M Deposit to be held by Agent in the O&M Reserve;

(d) next, subject to Borrower’s rights under Section 2.2.2(a), to pay all Accrued Interest and, on and after the Amortization Commencement Date, any Minimum Amortization Payment then due and payable;

(e) next, subject to Borrower’s rights under Section 2.2.2(g), to Agent to be deposited in the Subaccount for the Pre-Opening Expenses Escrow Account until such Subaccount contains the full amount of the Pre-Opening Escrow Funds, regardless if then required under the Facility Lease;

(f) next, subject to Borrower’s rights under Section 2.2.2(f), to Agent to be deposited in the Subaccount for the Operating Deficit Escrow Account until such Subaccount contains the full amount of the Operating Deficit Escrow Funds, regardless if then required under the Facility Lease, and to the extent that Borrower is ever obligated to replenish the Operating Deficit Escrow Account in accordance with the terms of the Facility Lease, to Agent in an amount which shall be deposited in the Operating Deficit Escrow Account and when added to the funds then held therein shall cause the Operating Deficit Escrow Account to contain the full amount of the Operating Deficit Escrow Funds;

(g) next, subject to Borrower’s rights under Section 2.2.2(h), to Agent to be deposited in the Subaccount for the Working Capital Escrow Account until such Subaccount contains the full amount of the Minimum Working Capital Amount, regardless if then required under the Facility Lease, and to the extent that Borrower is ever obligated to replenish the Working Capital Escrow Account in accordance with the terms of the Facility Lease, to Agent in an amount which shall be deposited in the Working Capital Escrow Account and when added to the funds then held therein shall cause the Working Capital Escrow Account to contain the full amount of the Minimum Working Capital Amount;

(h) next, to Ground Lessee in the amount of all rent and other sums then due and payable to Ground Lessee under the terms of the Ground Sublease, and all accrued and unpaid amounts relating thereto;

(i) next, subject to Borrower’s rights under Section 2.2.2(k), to Borrower to pay Eligible Expenses;

(j) next, subject to the limitations regarding Excess Revenues set forth in the following paragraph, to Borrower.

The amounts described in clauses (a) through (i) above shall be due and payable on each Scheduled Payment Date whether or not Revenues, the Insurance Holdback, the Interest Holdback, the O&M Holdback, the Operating Deficit Holdback, Pre-Opening Expense Holdback, the Project Working Capital Holdback, the Real Estate Tax Holdback and the Working Capital Holdback are sufficient therefor. Borrower hereby grants to Agent, for the benefit of Lenders, a first priority security interest in the Blocked Account and all deposits at any time contained therein and the proceeds thereof and will take all actions necessary to maintain in
favor of Agent and Lenders a perfected first priority security interest in the Blocked Account, including, without limitation, filing UCC-1 Financing Statements and continuations thereof. Borrower will not in any way alter or modify, or permit the alteration or modification of, the Blocked Account. Agent shall have the sole right to make withdrawals from the Blocked Account and all costs and expenses for establishing and maintaining the Blocked Account shall be paid by Borrower. Upon the occurrence and during the continuance of a Cash Trap Event (and, if any such Cash Trap Event is an Event of Default, such Event of Default is waived by Agent in writing), all amounts deposited into the Blocked Account shall be disbursed by Agent, to the extent of available funds, in the order of priority described in clauses (a) through (i) of this Section 2.6, with any remaining funds to be held in the Collateral Reserve. Upon the discontinuance of all Cash Trap Events, disbursements of Revenues from the Blocked Account will be made in the order of priority described in clauses (a) through (j) of this Section 2.6 and all funds then held by Agent in the Collateral Reserve shall be, at Borrower’s election (to be exercised by written notice to Agent), either paid to Agent to be deposited in the Subaccount for the Working Capital Escrow Account (provided, that if the Working Capital Escrow Account has already been funded in accordance with the terms of this Agreement, such funds shall be deposited directly in the Working Capital Escrow Account) or, subject to the payment of the applicable Minimum Interest Lookback Amount (if any) and the applicable Exit Fee (if any), shall be applied to the then outstanding principal balance of the Loan; provided, however, that if none of the discontinued Cash Trap Events were set forth in subparagraphs (a), (b), (f), (i), (j) or (o) of the definition of “Cash Trap Event” then all funds then held by Agent in the Collateral Reserve shall be disbursed by Agent, to the extent of available funds, in the order of priority described in clauses (a) through (j) of this Section 2.6. Prior to the Amortization Commencement Date and except for Revenues deposited in the Collateral Reserve, deposited in the Working Capital Escrow Account (or its Subaccount) or applied to the outstanding principal balance of the Loan, in each case as described above in this paragraph, if there are Revenues remaining after the payments described in clauses (a) through (i) above have been made (such remaining Revenues, if any, are referred to herein as the “Excess Revenues”), then, so long as no Default or Event of Default or Cash Trap Event shall have occurred and be continuing, one-half (1/2) of all Excess Revenues shall be paid to Borrower not more than once in any thirty (30) day period until such time as Borrower has received Excess Revenues of $6,000,000 in the aggregate pursuant to this sentence. The amount of all Excess Revenues not paid to Borrower pursuant to the immediately preceding sentence shall be, at Borrower’s election from time to time (to be exercised by written notice to Agent), either paid to Agent to be deposited in the Subaccount for the Working Capital Escrow Account (provided, that if the Working Capital Escrow Account has already been funded in accordance with the terms of this Agreement, such funds shall be deposited directly in the Working Capital Escrow Account) or shall be paid to Agent to be applied to the Indebtedness, subject to the payment of the Minimum Interest Lookback Amount and the Exit Fee on the amounts so applied. For avoidance of doubt, (i) prior to the Amortization Commencement Date, Borrower shall not be entitled to receive more than $6,000,000 of Excess Revenues, (ii) after the Amortization Commencement Date all Excess Revenues shall be paid to Borrower, subject to all terms, conditions and provisions of this Agreement and the other Loan Documents, and (iii) there shall be no Excess Revenues until all amounts then due and payable to Ground Lessee under the terms of the Ground Sublease and all accrued and unpaid amounts relating thereto shall have been paid in full. If, pursuant to the terms of this paragraph any Excess Revenues or funds in the Collateral Reserve are either deposited in the Subaccount for the Working Capital Escrow
Account or directly in the Working Capital Escrow Account, then the undisbursed amount of the Working Capital Holdback shall be reduced by the amount so deposited.

In the event Borrower is entitled to implement the Revenue Sweep pursuant to the terms of Section 15.1.9 of the Facility Lease, Borrower agrees that it shall immediately do so and shall provide written notice thereof to Agent within five (5) Business Days of its implementation of the Revenue Sweep. For so long as Borrower is entitled to keep the Revenue Sweep in place pursuant to the terms of Section 15.1.9 of the Facility Lease, Borrower agrees that all amounts subject to the Revenue Sweep shall be deposited into the Blocked Account.

ARTICLE 3
CONDITIONS TO DISBURSEMENTS

3.1 **Conditions to Initial Disbursement.** Lenders’ obligation to close the Loan and make the Initial Disbursement is conditioned upon Borrower’s and Guarantor’s execution, delivery and performance, as applicable, each in form and substance satisfactory to Agent in its sole discretion, of the following:

3.1.1 **Checklist.** To the extent not otherwise listed in this Section 3.1, all items set forth on the Closing Checklist, as the same may be amended from time to time.

3.1.2 **Loan Documents.** Originals of such promissory notes, mortgages, deeds of trust, guaranties, pledges and other Loan Documents as Agent shall require shall have been executed and delivered to Agent and each Note to the applicable Lender.

3.1.3 **Commitment Fee.** Borrower shall have paid Agent, for the benefit of Lenders, the Commitment Fee.

3.1.4 **Title.** The Title Policy, in form satisfactory to Agent shall have been issued to Agent on behalf of Lenders.

3.1.5 **Survey.** Agent shall have received a current Survey.

3.1.6 **Insurance.** Agent shall have received evidence of compliance with the insurance requirements of the Loan Documents and evidence of the payment of all Premiums then due and payable for the then current policy period.

3.1.7 **Environmental Reports.** Agent shall have received a copy of the Environmental Site Assessment and any other Environmental Report required by Agent.

3.1.8 **Zoning.** Agent shall have received a Property Zoning Report prepared by The Planning and Zoning Resource Corporation or a similar research firm approved by Agent, letters or other evidence with respect to the Property from the appropriate Governmental Authority concerning compliance with building codes and zoning laws, if available, and the Title Policy shall have an ALTA 3.1 zoning endorsement, with coverage for parking.

3.1.9 **Engineering Reports.** Agent shall have received Engineering Reports.
3.1.10 **Lien Search Reports.** Agent shall have received search reports satisfactory to it with respect to uniform commercial code financing statements, tax liens, judgments, the OFAC lists and criminal backgrounds of all individual Guarantors or controlling owners of Borrower conducted by a search firm or firms acceptable to Agent with respect to the Property and, as applicable, each Borrower Party in such jurisdictions as Agent shall have reasonably requested.

3.1.11 **Authority.** Borrower shall have delivered or caused to be delivered to Agent copies, certified by an officer or other authorized Person of the applicable Borrower Party of: (i) all such Organizational Documents related to each Borrower Party, which is an entity in each case together with each amendment thereto and certified (as of a date reasonably near the Closing Date) by the applicable Secretary of State as being a true and correct copy; (ii) a certificate of the Secretary of State of the jurisdiction of each Borrower Party’s formation (dated reasonably near the Closing Date), certifying that each Borrower Party is duly formed and in good standing under the laws of the State of the jurisdiction of its respective organization; (iii) a certificate of the Secretary of State of the State in which the Property is located (dated reasonably near the Closing Date), stating that each Borrower Party is duly qualified and in good standing in such State; (iv) a certificate of Borrower (“Closing Certificate of Borrower”) signed by a duly authorized officer or other authorized Person (dated as of the Closing Date), certifying (A) as to the truth of the representations and warranties in all material respects contained in the Loan Documents to which such parties are a party, both before and after giving effect to the making of the Loan by Lenders and to the application of the proceeds therefrom, (B) that to Borrower’s Knowledge, no material event has occurred and is then continuing, or would result from the making of the Loan by Lenders or from the application of the proceeds therefrom, that constitutes or would constitute an Event of Default, and (C) certain exhibits and definitions referenced in the Loan Documents; (v) a certified copy of the SPE Agreement and Resolution and resolutions of each Borrower Party which is an entity approving the Loan, this Agreement, the Notes and each of the other Loan Documents to which such Borrower Party is or is to be a party, and of all documents evidencing other necessary partnership, limited liability company or corporate action and governmental and other third party approvals and consents, if any, with respect to the Loan, this Agreement, the Notes and each other Loan Document; and (vi) a notarized certificate of each of the other Loan Documents to which such Borrower Party is or is to be a party and the other documents to be delivered hereunder.

3.1.12 **Opinions of Counsel.** Agent shall have received legal opinions from Borrower’s Counsel with respect to: (i) the due organization and existence of each Borrower Party; (ii) the due execution, delivery, authority, and enforceability of the Mortgage, this Agreement, the Notes, the Environmental Indemnity, the Guaranty and each of the other Loan Documents to which any Borrower Party is a party; (iii) usury; (iv) knowledge of adverse claims or violations of Organizational Documents or material contracts of Borrower Parties which are entities; (v) local filing requirements with respect to perfection; (vi) Borrower’s status as a Single Purpose Entity and the SPE Agreement and Resolution; and (vii) such other matters as Agent may reasonably require. In addition, Agent shall have received a substantive non-consolidation opinion letter dated the date hereof delivered by Borrower’s Counsel in connection with the Loan.
3.1.13 No Material Adverse Change. Agent and each Lender shall be satisfied that, as of the Closing Date, there shall have been no change or development, since March 29, 2011, that has or will have a Material Adverse Effect on Borrower, Guarantor, Provider or Proton Equipment Vendor.

3.1.14 Multi-Party Agreement. Agent shall have received a fully executed original of the Multi-Party Agreement.

3.1.15 Appraisal. Agent shall have received an Appraisal satisfactory to Agent.

3.1.16 Financial Statements. Guarantor shall have provided the required financial statements of Guarantor for the fiscal year to date ending 2010, all of which statements shall be accompanied by a certificate of the Guarantor certifying that each such financial statement presents fairly in all material respects the financial condition or operating results, as applicable, of Guarantor and has been prepared in accordance with generally accepted accounting principles or Guarantor’s established accounting practices consistently applied. Guarantor shall have provided a personal unaudited financial statement of Guarantor for the most recent calendar year and a copy of Guarantor’s most recent filed federal tax return, which unaudited financial statement and filed federal tax return shall be accompanied by a certificate of Guarantor certifying that such unaudited financial statement and filed federal tax return are true and correct to the best of Guarantor’s knowledge and belief and further certifying that such financial statement presents fairly in all material respects the financial condition of Guarantor and has been prepared in accordance with Guarantor’s established accounting practices consistently applied.

3.1.17 No Injunction. No law or regulation shall have been adopted, no order, judgment or decree of any Governmental Authority shall have been issued, and no litigation shall be pending or threatened, which in the good faith judgment of Agent would enjoin, prohibit or restrain, or impose or result in a Material Adverse Effect upon, the making or repayment of the Loan or the consummation of the transactions contemplated hereby.

3.1.18 Payment of Agent and Lender Expenses by Borrower. Borrower shall have paid all Charges then due and payable.

3.1.19 Additional Information. Agent shall have received such other information and documentation with respect to each Borrower Party and its respective Affiliates, the Property and the transactions contemplated herein as Agent may reasonably request.

3.1.20 Site Inspections. Agent shall have performed or caused to be performed on its behalf, on-site due diligence reviews of the Property.

3.1.21 Borrower’s Equity. Agent shall be satisfied that Borrower’s cash equity in the Property is no less than $60,000,000 (“Borrower’s Equity”) and that Borrower’s Equity, plus the Loan Amount, are sufficient to pay all Project Costs.

3.1.22 Funding. Agent shall have received from each Lender such Lender’s Pro Rata Share of the Initial Disbursement.
3.1.23 **Repayment of Bridge Loans.** Borrower shall deliver evidence to Agent that all sums lent to Borrower by the Proton Equipment Vendor and all other lenders shall have fully repaid.

3.1.24 **Other Requirements.** Borrower shall have complied with such other closing requirements as Agent shall impose.

For purposes of determining compliance with the conditions specified in Section 3.1, each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to such Lender, unless an officer of Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender prior to the Initial Disbursement specifying its objection thereto and either such objection shall not have been withdrawn by notice to Agent to that effect or such Lender shall not have made available to Agent such Lender’s Pro Rata Share of the Initial Disbursement.

3.2 **Advances.**

3.2.1 **All Advances.** Each Advance shall be subject to satisfaction of each of the following conditions:

(a) Any request for an Advance shall be submitted to Agent on Agent’s form of request, not less than twenty (20) Business Days prior to the anticipated disbursement date for the Advance, and shall be accompanied by all evidence required to be approved by Agent as a condition to such Advance, including, with respect to the conditions set forth in clauses (d), (e) and (f) below, a certificate from an officer or authorized representative of Borrower approved by Agent stating that said conditions are then satisfied. No Advance will be made within less than ninety (90) days prior to the Maturity Date or after the Amortization Commencement Date.

(b) Lenders shall not be required to make more than one Advance (which may consist of disbursements of one or more of the Holdbacks) during any calendar month. Each monthly Advance shall be in a minimum amount of $25,000 or, if less, the remaining undisbursed amount of the applicable Holdback or any Reserve.

(c) Agent may, in its discretion, require an endorsement to the Title Policy, in form and content satisfactory to Agent, insuring, in effect, that such Advance has the same priority as the Initial Disbursement and that there has been no material adverse change in the condition of title to the Property, including the absence of any Lien or exception which is not a Permitted Exception, since the issuance of the Title Policy. In addition to the foregoing, if at any time Agent reasonably believes that any Advance is not secured or will or may not be secured by the Mortgage as a first and prior lien or security interest on the Land and the Improvements (subject only to the Permitted Exceptions), then Borrower shall, within ten (10) Business Days after written notice from Agent, do all things and matters necessary (including execution and delivery to Agent of all further documents and performance of all other acts which Agent deems necessary or appropriate) to assure to the satisfaction of Agent that any Advance previously made hereunder or to be made hereunder is secured or will be secured by the Mortgage as a first.
and prior lien or security interest with respect to the Land and the Improvements (subject only to the Permitted Exceptions).

(d) No actions, suits or proceedings shall then be pending nor have any been threatened against or which affect Borrower, Guarantor or the Property and no event or circumstance shall have occurred which could have a Material Adverse Effect on Borrower or Guarantor.

(e) No Default or Event of Default or Cash Trap Event shall have occurred and all representations and warranties set forth in this Agreement and in any other Loan Document shall be true and correct.

(f) All Loan Documents shall be in full force and effect.

(g) Agent shall have received from each Lender such Lender’s Pro Rata Share of each such Advance.

(h) Borrower shall pay Agent, for its sole benefit, a processing fee equal to $2,500 (which shall include the cost, if any, of any Construction Consultant in connection with each such Advance).

(i) Agent shall have received from Borrower such other information and documents (including, without limitation, confirmations, certificates or other assurances from the General Contractor, the Proton Equipment Vendor or the Provider) as may be requested or required by Agent.

3.2.2 Advances for Construction Projects. All Advances from the CapEx Holdback, the Replacement Reserve or the Contingency Holdback in respect of a Construction Project shall be subject to satisfaction, as determined by Agent, of each of the following conditions, in addition to the continuance of satisfaction of the conditions set forth in Section 3.2.1 above:

(a) All requirements of Section 5.2.1, 5.2.2, 5.2.3, and 5.2.4 shall have been satisfied. All Construction Contracts with respect to such Construction Project shall be in full force and effect, and Agent shall have approved any modifications to the Construction Documents to the extent required under the terms hereof.

(b) There shall be no substantial unrepaired damage to the Property by fire or other casualty or otherwise which is not in Agent’s judgment adequately covered by collectible proceeds of insurance which will be made available to Borrower by Agent for such purpose.

(c) All permits, licenses and approvals, including, without limitation, all environmental approvals, Proton System Approvals, Licenses and Building Permits necessary for the construction of the phase of the work being undertaken as contemplated by the Approved Plans have been obtained in form and substance satisfactory to Agent and that Borrower shall have complied with all Applicable Laws in all material respects, including all land use, building, subdivision, zoning and similar ordinances and regulations promulgated by any Governmental Authority and applicable to the construction of the phase of the work being undertaken and to
permit construction to continue and be completed substantially in accordance with the timelines set forth on Exhibit D to the Closing Certificate of Borrower.

(d) All utilities and municipal services, including, without limitation, storm and sanitary sewers, required for such Construction Project shall be available at the Property and Borrower shall have the right to tie into such utilities and municipal services.

(e) Advances in connection with any Construction Project (other than Construction Work performed pursuant to the Proton System Purchase Agreement) shall be subject to the contractor retainages set forth in the General Contractor’s Agreement.

(f) The Construction Project, when completed in accordance with applicable Construction Documents, will be in compliance with all Applicable Laws and all consents or approvals required from third parties or any Governmental Authorities have been obtained or will be obtained at or prior to the time that such approvals are required.

(g) The Construction Consultant shall have approved the requested Advance confirming that the Construction Project completed to date is in substantial compliance with the Approved Plans and other Construction Documents and that the Construction Project is In Balance (Agent shall use commercially reasonable efforts to cause any Construction Consultant to approve or disapprove any such requested Advance as aforesaid in a diligent and prompt manner).

(h) All materials for such Construction Project included in any such Advance shall have been installed at the Property, or if not installed at the Property, meet all of the conditions set forth in Section 3.2.2(q).

(i) To the extent that additional permits, approvals or licenses for construction have been issued since the last construction disbursement, copies of such additional permits shall have been delivered to Agent.

(j) Borrower shall deliver to Agent a completed and itemized Application and Certificate for Payment (AIA Document No. G702) or similar form approved by Agent, containing the certification of the General Contractor or contractor or subcontractor to whom such payment is to be made, as applicable, and the Architect as to the accuracy of same, together with invoices relating to all items of Project Costs covered thereby and accompanied by a cost breakdown showing the cost of work on, and the cost of materials incorporated into, the Improvements to the date of such Application and Certificate for Payment. The cost breakdown shall also show the percentage of completion of each line item of the Project Budget (which shall be attached to each such Application and Certificate for Payment), and the accuracy of the cost breakdown shall be certified by Borrower and by the Architect. All such applications for payment shall also show all contractors and subcontractors, by name and trade, the total amount of each contract or subcontract, the amount theretofore paid to each subcontractor as of the date of such application, and the amount to be paid from the proceeds of the Advance to each contractor and subcontractor. Notwithstanding the foregoing, the Architect shall not be required to provide the certifications described above with respect to Construction Work performed pursuant to the Proton System Purchase Agreement.
(k) Contractors, subcontractors and materialmen shall have submitted such other sworn statements or affidavits and lien waivers in form and substance as Agent or the Title Company may require, along with payment receipts from all contractors, subcontractors, suppliers and materialmen, evidencing that they have been paid in full for all work performed and/or materials supplied to the date of the preceding Advance, except for contract retainages provided for in this Agreement.

(l) Those Construction Contracts designated by Agent (including subcontracts if the General Contractor is an Affiliate of Borrower or any Guarantor) shall have been collaterally assigned to Agent on Agent’s form and acknowledged by the applicable contractor.

(m) Within thirty (30) days after Agent’s written request, Borrower shall furnish an unconditional payment and performance bond in the amount of the General Contractor’s Agreement and such construction subcontracts as required by Agent, such bond(s) to be acceptable in form and substance to Agent in its sole discretion and issued by a surety authorized to do business in the State of California and otherwise acceptable in form and substance to Agent. If upon Substantial Completion Agent has not requested that Borrower furnish the payment and performance bond(s) described above, then so long as there is not a Deficiency in the CapEx Holdback, all funds in the CapEx Holdback that were allocated for the payment of such payment and performance bond(s) shall be reallocated by Agent, at Borrower’s written request, to the Contingency Holdback.

(n) No Deficiency then exists.

(o) Prior to the first Advance for Construction Work performed in connection with the Proton System Purchase Agreement after First Room Acceptance, Borrower shall deliver to Agent satisfactory evidence, and the Construction Consultant shall confirm in writing, that the Proton Equipment Vendor has obtained all clearances required for the clinical use of the Proton System from the U.S. Food and Drug Administration in accordance with Section 510(k) of the Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.).

(p) Prior to any Advance for Construction Work performed by the Proton Equipment Vendor in connection with the Proton System Purchase Agreement, (1) Borrower shall deliver to Agent a written certification from each of Borrower and the Proton Equipment Vendor that the required conditions to satisfy the applicable payment milestone described in Appendix 2-B of the Proton System Purchase Agreement and for which an Advance is being requested have been fully and unconditionally satisfied, and (2) the Construction Consultant shall confirm in writing that (A) the conditions described in clause (1) above have been satisfied and (B) the then current phase of the installation, testing or commissioning of the Proton System is in accordance with the timelines set forth on Exhibit D to the Closing Certificate of Borrower.

(q) Lenders shall not be required to make any Advance for any materials, machinery or other Personal Property not yet incorporated into the Improvements (the “Stored Materials”), unless the following conditions are satisfied:
(1) Borrower shall deliver to Agent bills of sale or other evidence reasonably satisfactory to Agent of the cost of, and, subject to the payment therefor, Borrower’s title in and to such Stored Materials;

(2) The Stored Materials are identified as relating to the Property and Borrower, are segregated so as to adequately give notice to all third parties of Borrower’s title in and to such materials, and are components in substantially final form ready for incorporation into the Improvements within no more than sixty (60) days from the date on which such Stored Materials are received by Borrower;

(3) The Stored Materials are stored at the Property and are protected against theft and damage in a customary manner;

(4) The Stored Materials will be paid for in full with the requested Advance, and all lien rights or claims of the supplier will be released upon full payment;

(5) Agent has or will have upon payment with disbursed funds a perfected, first priority security interest in the Stored Materials to the extent the same are incorporated into or become appurtenant to the Improvements, or paid for out of proceeds of the Loan;

(6) The Stored Materials are insured for an amount equal to their replacement costs in accordance with Section 5.1.3;

(7) The aggregate cost of Stored Materials stored at the Property is approved by the Construction Consultant and, if required by Agent, the Construction Consultant shall certify that it has inspected such Stored Materials and they are in good condition and suitable for use in connection with the Project; and

(8) The cost of Stored Materials stored at the Property, in the aggregate at any time, is not more than $1,000,000.

3.2.3 Completion. Upon Completion of each Construction Project, and as a condition to any final Advance or Advance for the payment of retainage requested with respect to such Construction Project, Borrower shall deliver, or cause to be delivered to Agent, the following, each in form and substance satisfactory to Agent:

(a) Completed AIA Forms G704 (Certificate of Substantial Completion), or similar form approved by Agent, from each of the Architect and the General Contractor, and such other certificates of the Construction Consultant, the Architect and the General Contractor that Agent may require confirming that such Construction Project is Complete.

(b) If the Construction Project affected or altered any matter that would be reflected on a survey in addition to those items shown on the as-built foundation survey previously provided to Agent, a current as-built survey of the Property showing no building encroachments, certified to Agent and the Title Company and prepared in accordance with Agent’s then-current ALTA survey requirements.
(c) Temporary or permanent certificate(s) of occupancy, or other evidence acceptable to Agent, together with all other appropriate certificates and other documentation that Agent may require from, and as are customarily issued by, applicable Governmental Authorities, evidencing (i) compliance with all Applicable Laws, except for non-compliance which could not have a Material Adverse Effect, and (ii) that no petitions, actions or proceedings are pending or threatened which could reasonably be expected to materially alter or declare invalid any approvals, consents, permits or certificates for or relating to such Construction Project, or any part thereof.

(d) Upon Completion of all Construction Work to be performed pursuant to the Proton System Purchase Agreement, a written certification from (i) each of Borrower and the Proton Equipment Vendor that the Proton System is fully installed and operational in all respects (subject to the written confirmation of the Construction Consultant) and that Final Acceptance has occurred, (ii) Provider that the Facility is Substantially Complete (subject to the written confirmation of the Construction Consultant) and that Provider has accepted the Facility in accordance with Section 7.5 of the Facility Lease and (iii) Borrower that all Proton System Approvals have been obtained and are full force and effect, including, without limitation, written authorization from the California Department of Public Health to treat Patients at the Facility (subject to the written confirmation of the Construction Consultant).

(e) Current searches of all Uniform Commercial Code financing statements filed with the Secretary of State of Borrower’s organization and/or the recorder’s office for the county in which the Property is located, against Borrower, as debtor, showing that no unterminated Uniform Commercial Code financing statements are filed or recorded against Borrower.

(f) Final sworn statements or affidavits and waivers of lien from contractors, subcontractors and materialmen as required by Agent or the Title Company.

(g) Such other items as Agent may reasonably require.

3.2.4 Payments. Agent may, in its sole discretion, make Advances relating to a Construction Project through the Title Company pursuant to a construction loan disbursement escrow agreement or directly to the General Contractor, the Proton Equipment Vendor or any subcontractor, material supplier or any vendor of fixtures, equipment, furniture, furnishings and other property.

3.2.5 Waiver and Reallocation. Agent may from time to time waive any condition or conditions to any Advances without such waiver or series of waivers constituting a course of dealing or any amendment to this Agreement or a prohibition against subsequent imposition of such condition or conditions or a waiver of any default. Agent may, in its sole discretion, reallocate funds in any Holdback to a different Holdback or to a new holdback or reserve and in connection with any such reallocation the Loan Budget shall be amended accordingly. Upon Borrower’s written notice to Agent, upon Completion of and payment in full for all matters covered by any line item within the CapEx Holdback (as substantiated by satisfactory evidence accompanying Borrower’s notice to Agent), any remaining undisbursed amounts allocated to that line item shall be reallocated to the Contingency Holdback, provided,
however, that if any such requested reallocation exceeds the lesser of (x) five percent (5%) of the budgeted amount of such line item and (y) $100,000, any such reallocation shall be subject to Agent’s prior written approval (and Agent’s consent to any such reallocation shall not relieve Borrower from the obligation to obtain Agent’s consent to any further reallocation as required above).

3.2.6 Procedures for Advances. Agent shall, no later than ten (10) days prior to the date a requested Advance is to be made, (i) notify each Lender either by telephone or by electronic mail of the amount requested by Borrower, the amount approved by Agent, the portion of such Advance to be funded by such Lender (i.e., such Lender’s Pro Rata Share of the requested Advance) and the proposed date of such Advance (the “Advance Date”) and (ii) send to each Lender by electronic mail the form of request submitted by Borrower (without attachments). Each Lender shall fund to Agent, in immediately available funds, its Pro Rata Share of the requested Advance not later than 10:00 a.m. (Dallas time) on the applicable Advance Date. Upon Agent’s receipt of each Lender’s Pro Rata Share of such Advance, the amount so received by Agent shall, subject to the conditions of this Agreement, be made available to Borrower either by Agent’s depositing said amount by wire transfer of immediately available funds as directed by Borrower or pursuant to Section 3.2.4. Subsequent to the making of an Advance, Agent shall deliver to a Lender, within eight (8) Business Days of such Lender’s request, such material relating to the Advance as such Lender may reasonably request. Any decision by Agent to make an Advance, and its determination of the amount of such Advance and the portion of such Advance to be funded by each Lender shall be final, binding and conclusive upon all Lenders, if made in good faith, absent manifest error, and all Lenders shall fund its Pro Rata Share of the requested Advance as aforesaid under all circumstances.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties. Borrower represents and warrants that all statements set forth in this Article 4 are true as of the Closing Date and Borrower covenants that, except for those representations and warranties that relate to a specific date expressly set forth below, Borrower shall cause the same to remain true until all Indebtedness has been paid and satisfied in full.

4.1.1 The Property.

(a) The use and occupancy of the Property complies with all Applicable Laws and Operating Agreements, except for matters which, both individually and collectively, do not have a Material Adverse Effect. Borrower has not received any notice of any violation of or non-compliance with any Applicable Laws or Operating Agreements.

(b) Borrower has good, marketable and indefeasible fee simple title to the Land and Improvements, a good and marketable leasehold interest in the Land and Improvements pursuant to the Ground Sublease and has good and merchantable title to the other Collateral, and all such title and interest is free and clear of any lien, claim, restriction, security interest or encumbrance or other title matter, other than Permitted Exceptions, and Borrower shall warrant and defend against the claims of all Persons whomsoever (i) its title to the Land

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and the Improvements and every part thereof and (ii) the validity and priority of the Lien of the Mortgage, subject only in each case to Liens permitted under the Loan Documents (including Permitted Exceptions). Neither Ground Lessee nor Borrower is in default under the Ground Sublease and no party thereto has exercised any right to terminate the Ground Sublease.

(c) The Property is in good condition, order and repair in all respects material to its intended use, operation and value as a proton radiation treatment center. To the Borrower’s Knowledge, there exist no structural or other material defects or damages in the Property, whether latent or otherwise, which will materially impair the value of the Property or the construction of Improvements. Borrower has not received written notice from any insurance company or bonding company of any defects or inadequacies in the Property or any part thereof, which would, alone or in the aggregate, adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

(d) The Property is comprised of a single tax parcel, or group of contiguous tax parcels, which is or are separate and apart from any property not owned by Borrower, for real estate tax purposes, and no part of the Land or the Improvements is or shall be jointly assessed with any portion of the Collateral that may be deemed to constitute personal property, or any other procedure whereby the lien of any taxes that may be levied against such personal property shall be assessed or levied or charged to the Land or the Improvements.

(e) The Property has water, gas and electrical supply, storm and sanitary sewerage facilities, other required public utilities, fire and police protection, and means of access between the Property and public streets, all of the foregoing adequate and sufficient for the intended use and operation of the Facility as a proton radiation treatment center, and all of the foregoing comply with all Applicable Laws. All public utilities necessary for the full use and enjoyment of the Property are located in the public right-of-way abutting the Property or in or through a recorded irrevocable easement in favor of the Property, and all such utilities are connected so as to serve the Property without passing over other property (or, if not, such services are readily available and will be connected to the Property by Completion), except to the extent that such utilities are accessible to the Property by virtue of a recorded irrevocable easement or similar agreement or right. All roads necessary for the use of the Facility as a proton radiation treatment center have been completed or will be completed upon Completion of all Construction Work to be performed pursuant to the General Contractor’s Agreement and are either part of the Property (by way of deed or recorded easement) or dedicated to public use and accepted by all Governmental Authorities.

(f) No part of the Property has been taken by the power of eminent domain or condemnation nor is any proceeding for such a taking pending, or to Borrower’s Knowledge, threatened. There has not been committed by or on behalf of Borrower or, to Borrower’s Knowledge, any other person involved with the operation or use of the Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any part thereof or any monies paid in performance of its obligations under any of the Loan Documents to which Borrower is a party.
(g) As of the Closing Date, no part of the Property is located within an area designated as a “flood plain” or “flood hazard area” according to applicable flood plain and flood control surveys, except as shown on the Survey delivered to Agent at Closing.

(h) Except for Construction Projects approved by Agent which are being conducted pursuant to the terms of this Agreement, the Property, including all Improvements, and all grading, seeding and landscaping and all other on-site and off-site improvements have been completed in substantial compliance with all Applicable Laws, and have been fully equipped and paid for and is in good condition, order and repair in all respects material to its current and intended uses and to Borrower’s Knowledge, there are no material defects or damage thereto.

(i) The Improvements constructed to date have been constructed in substantial accordance with the Approved Plans and have been inspected and approved by all necessary municipal authorities, and the Property, including the Improvements, is in compliance in all material respects with all Applicable Laws and with all requirements of applicable insurance carriers. Borrower has not received written notice from any insurance company or bonding company of any defects or inadequacies in the Property or any part thereof, which would, alone or in the aggregate, adversely affect the insurability of the same or cause the imposition of extraordinary premiums or charges thereon or of any termination or threatened termination of any policy of insurance or bond.

(j) Except for the agreements listed on Exhibit C, there are no Material Agreements applicable to or binding upon Borrower, the Property or the ownership, management, operation, leasing or use thereof. Borrower has delivered to Agent true, correct and complete copies of all agreements listed on Exhibit C. Each Material Agreement is in full force and effect and is valid and enforceable in all material respects, subject in each case to Insolvency Laws and general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law). Neither the execution and delivery of the Loan Documents to which Borrower is a party, its performance thereunder, the recordation of the Mortgage, nor the exercise of any remedies by Agent, will adversely affect Borrower’s rights under any Material Agreement.

(k) (i) The Property is not subject to any Leases or other use or occupancy licenses or agreements other than the Facility Lease; (ii) the Facility Lease is in full force and effect and has not been amended or modified in any way (other than pursuant to the Multi-Party Agreement); (iii) to Borrower’s Knowledge, Provider has no offset right, claim or defense to the enforcement of the Facility Lease; (iv) Provider has not made any claim against Borrower under the Facility Lease which remains outstanding, there are no defaults on the part of Borrower under the Facility Lease, and to Borrower’s Knowledge, no event has occurred which, with the giving of notice or passage of time, or both, would constitute such a default; (v) there is no present default by Provider under the Facility Lease and no notice of termination has been issued under the Facility Lease; (vi) Borrower is the sole owner of the entire lessor’s interest in the Facility Lease, and except pursuant to the Loan Documents, has not otherwise pledged, assigned or encumbered any of its interest in the Facility Lease; (vii) the Facility Lease is the valid, binding and enforceable obligation of Borrower and Provider, subject in each case to Insolvency Laws and general principles of equity (regardless of whether enforcement is sought in a proceeding in
equity or at law); (viii) no Person has any possessory interest in, or right to occupy, the Property except under the terms of the Facility Lease; (ix) other than the right of first refusal contained in Section 17.2 of the Facility Lease (which right is subordinate to the Loan Documents pursuant to the Multi-Party Agreement), the Facility Lease does not contain any option to purchase or right of first refusal to purchase the Property or any part thereof; (x) neither the Facility Leases nor the Revenues (or any portion thereof) have been assigned or pledged except to Agent, for the benefit of Lenders; (xi) no other Person has any interest in the Facility Lease except Borrower and Provider; and (xii) no brokerage commissions remain unpaid or will become due and payable with respect to the Facility Lease, including upon any expansion of the premises or any renewal or extension thereof.

(i) The Operating Budget represents a full, complete, accurate and good faith estimate of all Revenues, Impositions, operating expenses, capital expenditures and reserves relating to the ownership and operation of the Property for the time periods reflected in said Operating Budget.

(m) With respect to the Property, the Mortgage, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (i) a valid, perfected first priority lien on Borrower’s fee simple title to, and Borrower’s leasehold interest in, the Property, subject only to Permitted Exceptions; and (ii) perfected security interests in and to, and perfected collateral assignments of, all personal property of Borrower (including the Facility Lease), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Exceptions.

(n) The Permitted Exceptions do not and will not materially adversely affect or interfere with: (i) the intended use or operation, of the Property or any portion thereof; (ii) the security intended to be provided by the Mortgage; (iii) Borrower’s ability to repay the Notes or pay any other amounts due under the Loan Documents; or (iv) any Borrower Party’s ability to perform its obligations under any other Loan Document in accordance with the terms of the Loan Documents. There are no claims for payment for work, labor or materials affecting the Property which are or may become a Lien prior to, or of equal priority with, the Liens created by the Loan Documents (other than mechanics or materialmens liens for work or materials performed or supplied the costs for which are not yet past due or which are being contested in a manner permitted by this Agreement). Nothing in this Section 4.1.1 may be relied on by the Title Company issuing any policies covering the Property. No Person other than Borrower owns any interest in any payments due under the Facility Lease that is superior to or of equal priority with Lenders’ interest therein.

(o) All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under Applicable Laws have been paid in full or deposited with the Title Company for payment upon recordation of the deeds effecting such transfer. All mortgage, mortgage recording, stamp, intangible or other similar tax required to be paid by any Person under Applicable Laws in effect in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including the Mortgage, and the Liens intended to be created thereby, have been
paid or will be deposited with a the Title Company for payment upon recordation of the Mortgage.

(p) Borrower has delivered to Agent true, correct and complete copies of all agreements and other instruments under which it or any of its Affiliates or any other Person have rights or obligations in respect of Borrower’s acquisition, operation, ownership, management or lease of the Property.

(q) To Borrower’s Knowledge there are no pending or proposed special or other assessments for public improvements or other matters affecting the Property, nor, to Borrower’s Knowledge, are there any contemplated improvements to the Property that are likely to result in such special or other assessments.

(r) Borrower has delivered to Agent a true, correct and complete copy of the General Contractor’s Agreement and the General Contractor’s Agreement is in full force and effect and each party thereto is in compliance in all material respects with their obligations under the General Contractor’s Agreement. The work to be performed by the General Contractor under the General Contractor’s Agreement includes the work delineated by the Approved Plans. All work on the Project that has heretofore been completed, if any, has been completed in accordance with the Approved Plans in all material respects and in a good and workmanlike manner and free of any defects and in accordance with all Applicable Laws.

(s) The Approved Plans comply with all Applicable Laws and the requirements of the Facility Lease and the Proton System Purchase Agreement, and have been approved by the General Contractor, the Provider, the Proton Equipment Vendor and each Governmental Authority as is required for the construction and development of the Project. Borrower is not aware of any event or condition which may necessitate any changes in the Approved Plans in order to complete the construction and development of the Project as contemplated by the Approved Plans and in accordance with the timelines set forth on Exhibit D to the Closing Certificate of Borrower. Borrower is not aware of any event or condition which could prevent the construction of the Project from being completed in accordance with the timelines set forth on Exhibit D to the Closing Certificate of Borrower.

(t) Borrower has delivered to Agent a true, correct and complete copy of the Project Budget. The Project Budget accurately reflects all Project Costs. Borrower is not aware of any event or condition which could prevent the construction of the Project from being completed in accordance with the Project Budget.

(u) Borrower has obtained, or will obtain at such times as are necessary to continue the construction authorized thereby, all licenses, permits and approvals, including, without limitation, building permits and approvals necessary for the construction of the Improvements pursuant to and in accordance with the Approved Plans or any part thereof or the commencement or continuance of construction thereof, as the case may be, including but not limited to, where appropriate, all required environmental permits (collectively, the “Building Permits”). All Building Permits are in full force and effect and are not subject to any revocation, amendment, release, suspension, forfeiture or the like. Borrower is not in violation of any of the
terms, provisions, covenants or conditions of any of the Building Permits. Borrower has delivered to Agent true, complete and correct copies of all Building Permits. Borrower has obtained all approvals from, and has given all such notices to, and has taken all such other actions with respect to such Governmental Authority as may be required under Applicable Laws for the commencement of the construction of the Improvements.

4.1.2 Ownership Structure, Power and Authority.

(a) All of the information regarding Borrower set forth in Section 1.1.1 of this Agreement is true and correct. Borrower is duly formed, validly existing and in good standing under the laws of the State of Delaware and is qualified to do business in the State of California. Borrower is a Single Purpose Entity and the SPE Agreement and Resolution has not been rescinded, revoked, nullified, abrogated, terminated, superseded, in full or in part, or any amended or modified. Borrower has no indebtedness for borrowed money other than the Indebtedness and the Permitted Indebtedness.

(b) Exhibit B to the Closing Certificate of Borrower accurately depicts the ownership structure of Borrower. Each Borrower Party has the requisite authority to execute, deliver and carry out the terms and provisions of this Agreement, the Loan Documents, the Multi-Party Agreement, the Ground Lease, the Ground Sublease and other documents to be executed and delivered by Borrower and Guarantor, as applicable, pursuant to this Agreement. This Agreement constitutes, and the Loan Documents, the Multi-Party Agreement, the Ground Lease, the Ground Sublease and other documents to be executed and delivered pursuant to this Agreement, when executed and delivered pursuant hereto, will constitute, the duly authorized obligations of the party or parties, other than Agent or Lenders, executing the same.

(c) True and complete copies of the Organizational Documents have been furnished to Agent, and there are no other agreements, oral or written, relating to any Borrower Party as regards the ownership and governance of any Borrower Party. The Organizational Documents were duly executed and delivered, are in full force and effect, and are binding upon and enforceable in accordance with their terms. No breach exists under the Organizational Documents and no act has occurred and no condition exists or after giving effect to this Agreement and the Loan Documents will exist, which, with the giving of notice or the passage of time, or both, would constitute a breach under or violate the Organizational Documents.

(d) All consents, approvals or authorizations of or declarations, registrations or filings with any Governmental Authority or nongovernmental person or entity, including any creditor, member, partner or shareholder, as applicable of any Borrower Party, required in connection with the execution, delivery and performance of this Agreement or any of the Loan Documents, other than the recordation of the Mortgage and the filing of Financing Statements, have been obtained except for such consents, approvals or authorizations of or declarations or filings with any Governmental Authority or non-governmental person or entity where the failure to so obtain would not have a Material Adverse Effect on any Borrower Party or the prospect of repayment of the Indebtedness.

(e) No Borrower Party is insolvent and there has been no: (i) assignment made for the benefit of the creditors of any of them; (ii) appointment of a receiver for any of
them or for the property of any of them; or (iii) Insolvency Proceeding instituted by or against any of them or is subject to any Bankruptcy
Action; nor is there any threat of any of the foregoing.

(f) Borrower and Guarantor are in compliance with all Material Agreements to which they are a party and there is no default under
any Material Agreement, and to Borrower’s Knowledge, no event has occurred which, with the giving of notice or passage of time, or both,
would constitute such a default. Neither Borrower nor Guarantor is in default under any other agreement to which Borrower or Guarantor is a
party, except for any default which could not have a Material Adverse Effect on Borrower or Guarantor or the prospect of repayment of the
Indebtedness or performance of the Obligations. No notice of default has been delivered by Borrower or Guarantor to any other party to a
Material Agreement. The execution and delivery of the Loan Documents and the performance by Borrower and each Guarantor of their
respective obligations under the Loan Documents: (i) do not violate any Applicable Laws; and (ii) do not conflict with, are not inconsistent with,
and will not result, in any breach of any of the terms, covenants, conditions or provisions of, or constitutes a default under, any indenture,
mortgage, deed of trust, instrument, document, agreement or contract of any kind which creates, represents, evidences or provides for any Lien,
upon any of the assets of Borrower or Guarantor, or any other indenture, mortgage, deed of trust, instrument, document, agreement or contract of
any kind to which Borrower or Guarantor, is a party or by which Borrower or Guarantor, may be bound.

(g) Except as set forth on Exhibit B attached hereto there are no actions, suits or proceedings pending or, to Borrower’s Knowledge,
threatened against or affecting any Borrower Party or the Property before any court or any governmental, administrative, regulatory, adjudicatory
or arbitral body or agency of any kind, including, without limitation, suits, actions or proceedings under the Racketeer Influenced and

(h) Borrower is not and will not be an “employee benefit plan” as defined in Section 3(3) of ERISA, which is subject to Title I of
ERISA; the assets of Borrower do not and will not constitute “plan assets” of one or more such plans for purposes of Title I of ERISA; Borrower
is not and will not be a “governmental plan” within the meaning of Section 3(32) of ERISA; and transactions by or with Borrower are not and
will not be subject to state statutes applicable to Borrower regulating investments of fiduciaries with respect to governmental plans.

(i) None of (i) any Borrower Party; (ii) any person or entity Controlling or Controlled by Borrower or Guarantor; (iii) any person or
entity having a beneficial interest in Borrower or Guarantor, to the extent not a publicly held entity; (iv) any person or entity for whom Borrower
is acting as agent or nominee in connection with this transaction; (v) any of the foregoing persons’ or entities’ partners, members, shareholders
or other equity owners and none of their respective employees, officers, directors, representatives or agents; or (vi) to Borrower’s Knowledge,
any tenant of the Project, is a Prohibited Person. None of the funds of any Borrower Party have been derived from any unlawful activity with the
result that the investment in Borrower (whether directly or indirectly), is prohibited by law or the Loan is in violation of law.

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(j) Except for agreements approved by Agent, there are no agreements between Borrower, on the one hand, and any of its Affiliates or Affiliates of Guarantor, on the other hand.

(k) No Material Adverse Effect has occurred in the operations or financial condition of Borrower or Guarantor since the date the last financial statements of Borrower were delivered to Agent.

(l) All financial data and statements prepared by or on behalf of Borrower and the Property and delivered to Agent prior to the date hereof (i) are true, complete and correct, in all material respects; (ii) accurately represent in all material respects the financial condition or operating results, as applicable, of Borrower or Guarantor and the Property as of the date of such reports; and (iii) have been prepared in accordance with accounting principles consistently applied which have been approved by Agent. Borrower does not have any material contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments, that are known to it and that are reasonably likely to have a Material Adverse Effect, except as referred to or reflected in said financial statements and operating statements.

(m) Borrower and Guarantor have filed, or caused to be filed, all material tax returns (federal, state, local and foreign) required to be filed and have paid all amounts of taxes shown thereon to be due (including interest and penalties) and all other taxes (including intangible fees, assessments and other governmental charges or taxes) owing (or necessary to preserve any Liens in favor of Agent and Lenders), by Borrower and Guarantor, except for such taxes (i) which are not yet delinquent or (ii) as are being contested in good faith and by proper proceedings, and against which adequate reserves are being maintained. No extension of time for assessment or payment by Guarantor of any federal, state or local tax is in effect.

(n) Neither Borrower nor any Affiliate of Borrower is a “foreign person” within the meaning of Section 1445(f)(3) of the Internal Revenue Code.

(o) Borrower (i) has obtained or has caused to be obtained all Licenses required as of the Closing Date by, and accomplished all filings, registrations and qualifications with (or obtained exemptions from any of the foregoing from), and (ii) will obtain (or will cause to be obtained), during the course of each Construction Project as and when required, all Licenses, and accomplish all filings, notifications, registrations and qualifications with (or obtain exceptions from any of the foregoing from), all applicable Governmental Authorities required for Borrower to legally own, develop, construct and manage the Property and to conduct its business. All such Licenses are or will be, valid and in full force and effect, and are not, or will not be, subject to any pending or, to Borrower’s Knowledge, threatened, administrative or judicial proceeding to revoke, cancel or declare any of such Licenses invalid. No default or violation exists with respect to any of such Licenses in a manner that could have a Material Adverse Effect, and no event has occurred which constitutes, or, to Borrower’s Knowledge, with due notice or lapse of time or both may constitute, a default under, or a violation of, any of such Licenses that could have a Material Adverse Effect.
(p) Borrower (i) has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and (ii) has received reasonably equivalent value in exchange for its obligations under the Loan Documents. Giving effect to the transactions contemplated by the Loan Documents, the fair saleable value of Borrower’s assets exceeds and will, immediately following the execution and delivery of the Loan Documents, exceed Borrower’s total liabilities, including subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of Borrower’s assets is and will, immediately following the execution and delivery of the Loan Documents, be greater than its probable liabilities, including the maximum amount of Borrower’s contingent liabilities or its debts as such debts become absolute and matured. Borrower’s assets do not and, immediately following the execution and delivery of the Loan Documents will not, constitute unreasonably small capital to carry out Borrower’s business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of its obligations).

(q) Borrower has not purchased any portion of the Property with proceeds of any illegal activity.

4.1.3 The Loan.

(a) To Borrower’s Knowledge, the interest and other fees and charges to be received by Agent and Lenders under this Agreement and the Loan Documents constitute lawful interest and are neither usurious nor illegal.

(b) The Loan Budget represents a full, complete, accurate and good faith estimate of all uses of the Loan proceeds.

(c) No brokerage fees or commissions are payable by or to any person in connection with this Agreement or the Loan other than the Broker(s), if any.

(d) No information contained in this Agreement, the other Loan Documents to which it is a party, or any written statement furnished by or, to Borrower’s Knowledge, on its behalf pursuant to the terms of this Agreement contains any untrue statement of a material fact or omits to state a fact necessary to make the statements contained herein or therein not materially misleading in light of the circumstances under which they were made. To Borrower’s Knowledge, there is no condition, fact, circumstance or event which has not been disclosed to Agent that would make any such information inaccurate, incomplete or otherwise misleading in any material respect or that otherwise could have a Material Adverse Effect. To Borrower’s Knowledge, Borrower has disclosed to Agent all material facts and has not failed to disclose any material fact that would cause any representation or warranty made herein to be materially misleading.

(e) No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any “margin stock” within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with such Regulation U or any other Regulations of such Board of Governors, or for any purpose.
prohibited by Applicable Laws or by the terms and conditions of this Agreement or the other Loan Documents.

(f) Each Loan Document to which it is a party constitutes such Borrower Party’s legal, valid and binding obligation, enforceable against it in accordance with its terms, subject only to Insolvency Laws and general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law). The Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense by any Borrower Party, including the defense of usury, nor would the operation of any of the terms of the Loan Documents to which any Borrower Party is a party, or the exercise of any right thereunder, render the Loan Documents to which any Borrower Party is a party unenforceable, subject to Insolvency Laws and general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law), and no any Borrower Party has asserted any right of rescission, set-off, counterclaim or defense with respect thereto. There exists no Default, Event of Default or Cash Trap Event.

4.1.4 Environmental Matters.

(a) The Property complies with all Environmental Laws.

(b) Since Borrower’s acquisition of the Property, and to Borrower’s Knowledge prior to such time, no spill, release or discharge of any Hazardous Substances has occurred on or about the Property nor, to Borrower’s Knowledge, is there any threat of a spill, release or discharge.

(c) Borrower has not used the Property, nor permitted the Property to be used, to treat, dispose, refine, produce, store, handle, transfer, process or transport any Hazardous Substance (other than Hazardous Substances which were used in the ordinary course of the business of the Facility and which were stored, handled, used, transferred and transported in compliance with all Environmental Law), and, to Borrower’s Knowledge, no such use of the Property was made by any predecessor in interest or any other individual or entity.

(d) No equipment on the Property contains polychlorinated biphenyls.

(e) No underground storage tank is located on the Property.

(f) No asbestos is located on the Property.

(g) The Property does not contain any facility subject to reporting under Section 312 of the federal Emergency Planning and Community Right-to-Know Act of 1986 or any federal regulations promulgated thereunder.

(h) Borrower has truthfully and fully provided to Agent, in writing, any and all information relating to environmental conditions in, on, under or from the Property that is known to it and that is contained in its files and records, including but not limited to any reports relating to Hazardous Substances.

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There is no Environmental Claim pending or, to Borrower’s Knowledge, threatened with respect to the Property.

(j) No Liens are presently recorded with the appropriate land records under or pursuant to any existing Environmental Law with respect to the Land or the Improvements and, to Borrower’s Knowledge, no Governmental Authority has commenced taking or is in the process of taking any action to subject the Land and the Improvements to Liens under any existing Environmental Law.

4.1.5 Additional Representations and Warranties.

(a) (i) All cost reports (if any) and other reports of every kind whatsoever required by law or by written or oral contracts or otherwise to have been filed or made with respect to the Provider Operations have been filed or made, and all such reports are, and all such future reports shall be, materially accurate and complete and not misleading in any material respects, (ii) Borrower shall not permit any cost reports (if any) to remain open or unsettled, (iii) there are no reimbursement or reimbursement-related claims, actions or appeals pending (and no claims or reports have been filed which should result in any such claims, actions or appeals) before any commission, board or agency including without limitation any intermediary or carrier, the Provider Reimbursement Review Board (as defined in 42 U.S.C. §1395oo) or the Administrator of CMS, with respect to any Governmental Health Program or claims for the Provider Operations, that, if determined adversely, would have a Material Adverse Effect, or, any disallowance by any commission, board or agency in connection with any audit of such cost reports that is not reflected on Borrower’s financial statements, and (iv) no validation review or program or corporate integrity review related to Borrower, Provider or the Provider Operations, or the consummation of the transactions contemplated in the Loan Documents, or related to the Facility, has been conducted by any commission, board or agency in connection with a Governmental Health Program, and to Borrower’s Knowledge, no such reviews are scheduled, pending or threatened against or affecting Borrower, Provider, the Provider Operations, or the Facility, or the consummation of the transactions contemplated hereby.

(b) Without limiting the generality of any other representation or warranty made herein, Borrower states that (i) Borrower and/or Provider, each of their respective Affiliates and each of their respective officers, directors, employees and contractors (other than contracted agencies) (collectively, “Subject Persons”) in the exercise of their respective duties for the Provider Operations, is in compliance in all material respects with all applicable statutes, laws, ordinances, rules and regulations of any Governmental Authority with respect to health care matters (including without limitation Section 1128B(b) of the Social Security Act, as amended, 42 U.S.C. Section 1320a-7(b) (Criminal Penalties Involving Medicare or State Health Care Programs), commonly referred to as the “Federal Anti-Kickback Statute,” and the Social Security Act, as amended, Section 1877, 42 U.S.C Section 1395nn (Prohibition Against Certain Referrals), commonly referred to as “Stark Statute” and any analogous state anti-kickback statute and physician self-referral statute (collectively, “Healthcare Laws”), (ii) each of Borrower and Provider have maintained and do and will maintain in all material respects all records required to be maintained by the Food and Drug Administration, Drug Enforcement Administration, California Department of Public Health, State Boards of Pharmacy and Governmental Health Programs as required by the Healthcare Laws with respect to the Provider Operations, and there
are no presently existing circumstances which would result or likely would result in material violations of the Healthcare Laws with respect to the Provider Operations, (iii) no Subject Person is currently, or has in the past been, subject to any federal, state, local governmental or private payor civil or criminal investigations, inquiries or audits involving and/or related to its compliance with Healthcare Laws, nor subject to any federal, state or private payor inquiry, investigation, inspection or audit regarding its activities, including without limitation, an inquiry or investigation of any Person having “ownership, financial or control interest” in such Subject Person (as that phrase is defined in 42 C.F.R. §420.201 et seq.) involving compliance with Healthcare Laws, and (iv) no Subject Person or no owner, officer, manager, employee or Person with a “direct or indirect ownership interest” (as that phrase is defined in 42 C.F.R. §420.201) in a Subject Person; (v) has had a civil monetary penalty assessed against it, him or her pursuant to 42 U.S.C. §1320a-7a; (w) has been excluded from participation in a Governmental Health Program; (x) has been convicted (as that term is defined in 42 C.F.R. §1001.2) of any of those offenses described in 42 U.S.C. §1320a-7b or 18 U.S.C. §§669, 1035, 1347, 1518; (y) has been involved or named in a complaint made or any other action taken pursuant to the False Claims Act under 31 U.S.C. §§3729-3731 or qui tam action brought pursuant to 31 U.S.C. §3729 et seq., or under or pursuant to any analogous state false claims law, or (z) is currently the subject or target of any investigation by a Governmental Authority of an alleged violation of Healthcare Laws, in each case that could reasonably be anticipated to materially and adversely affect Provider, the Provider Operations, Borrower or the Project.

(c) Borrower states that (i) Borrower and Provider have such permits, licenses, franchises, certificates and other approvals or authorizations as are necessary under Applicable Laws to own their respective properties as of the Closing Date, and will obtain and maintain all such permits, licenses, franchises, certificates and other approvals or authorizations as and when required to conduct the Provider Operations and to receive reimbursement under Medicare, Medicaid, and such other Governmental Health Programs in which any such Person or the Facility participates (including reimbursement for each and every separately-licensed unit of the Facility). (ii) Borrower nor Provider is currently subject to, nor has been subject to in the last two (2) years, suspension, revocation, renewal or denial of its participation in any Governmental Health Program, and (iii) there currently exist no restrictions, deficiencies, required plans of correction actions or other such remedial measures with respect to Governmental Health Program certifications or state or local licensure of Borrower or Provider, and which, with respect to Provider only, affect or could affect the Project or could adversely affect Provider’s operations at the Facility.

(d) Borrower states that (i) Exhibit D sets forth an accurate, complete and current list of all participation agreements with (x) Governmental Health Programs and (y) private health maintenance organizations, Blue Cross and Blue Shield plans, insurance programs, preferred provider networks and self-insured employers or any management service organizations of any such self-funded employers (collectively, “Non-Governmental Payors”) with respect to the Provider Operations, (ii) the participation of Borrower, Provider and the Facility in each Non-Governmental Payor program is not subject to or, to Borrower’s Knowledge, threatened with, revocation, suspension, termination, probation, restriction, or limitation, and no reasonable basis currently exists to believe that any such action will occur in the future, and (iii) no Non-Governmental Payor has given notice to Borrower or Provider of non-renewal of any such arrangement.
(e) Borrower states that to the extent that and for so long as Borrower or Provider is a “covered entity” within the meaning of HIPAA, such Person (i) shall undertake all necessary surveys, audits, inventories, reviews, analyses and/or assessments (including any necessary risk assessments) of all areas of its business and operations required by HIPAA and/or that could be adversely affected by the failure of Borrower or Provider to be HIPAA Compliant (as defined below); (ii) shall develop a detailed plan and time line for becoming HIPAA Compliant (a “HIPAA Compliance Plan”); and (iii) shall implement those provisions of such HIPAA Compliance Plan in all material respects necessary to ensure that such Person is and remains HIPAA Compliant. Without limiting the generality of the foregoing, Borrower states that each such Person maintains a business associate agreement with each “business associate” as that term is defined in the Privacy Rule (as herein referenced). For purposes hereof, “HIPAA Compliant” shall mean that such Person (x) is and shall be in material compliance with each of the applicable requirements of HIPAA and the so-called “Privacy Rule” and “Security Rule” promulgated thereunder, as the same are and have been amended from time to time, on and as of each date that any part thereof, or any final rule or regulation thereunder, becomes effective in accordance with its or their terms, as the case may be (each such date, a “HIPAA Compliance Date”) and (y) is not, as of any date following any such HIPAA Compliance Date, the subject of any civil or criminal penalty, process, claim, action or proceeding, or any administrative or other regulatory review, survey, process or proceeding (other than routine surveys or reviews conducted by any Governmental Authority) that could result in any of the foregoing or that could reasonably be expected to materially and adversely affect the Provider Operations or Borrower’s or Provider’s business, operations, assets, properties or condition (financial or otherwise), in connection with any actual or potential violation by Borrower or Provider of the then-effective provisions of HIPAA, and no reasonable basis currently exists to believe that such Person will become subject to any such action.

(f) Borrower states that (i) Borrower or Provider, as the case may be, are and will be the lawful owners of any certificates of need (if any) or any other Licenses for the ownership and operation of the Facility, (ii) to Borrower’s Knowledge, in the event that Agent or Lenders acquires any of the Property through foreclosure or otherwise, neither Agent nor Lenders, nor any purchaser of the Property (through a foreclosure or otherwise), must obtain a certificate of need from any applicable state healthcare regulatory authority or agency (other than giving such notice required under the applicable state law or regulation) prior to applying for and receiving a license to operate the Facility as it is intended to be operated and certification to receive Governmental Health Program payments for Patients having coverage thereunder, provided that neither the services offered at the Facility nor the number of treatment rooms operated would be changed.

(g) Borrower states that Borrower, and to Borrower’s Knowledge, no previous owner of the Property has received any funding in connection with the Property under the federal Hill-Burton Act, 42 U.S.C. Section 291 et seq.

(h) Borrower states that the Property and the Provider Operations are not subject to, and Borrower shall indemnify and hold Agent and Lenders harmless from and against, any liability in respect of amounts received by Borrower for the purchase or improvement of the Property or any part thereof under restricted or conditioned grants or donations, including.
(i) Borrower states that, except as shown on Exhibit B, there are no pending or, to Borrower’s Knowledge, any threatened labor disputes, strikes, lockouts, or similar occurrences or grievances against any Borrower Party or Provider that could affect the Facility or Provider Operations.

(j) Borrower states that (i) neither Borrower nor Provider is a party to any labor union or collective bargaining agreements and to Borrower’s Knowledge is in compliance with all Applicable Laws respecting employment and employment practices, including, without limitation, laws, regulations, and judicial and administrative decisions relating to wages, hours, conditions of work, collective bargaining, health and safety, payment of social security, payroll, withholding and other taxes, worker’s compensation, insurance requirements, as well as requirements of ERISA and the Consolidated Omnibus Budget Reconciliation Act, (ii) there is no (x) unfair labor practice complaint pending or, to Borrower’s Knowledge, threatened against Borrower or Provider before the National Labor Relations Board or any court nor any pending or, to Borrower’s Knowledge, threatened sexual harassment, or wrongful discharge claim with respect to any employee of Borrower or Provider, (y) labor strike, dispute, slowdown, or stoppage pending or, to Borrower’s Knowledge, threatened against Borrower or Provider, or (z) representation petition, respecting the employees of Borrower or Provider filed or threatened to be filed with the National Labor Relations Board.

4.2 Reliance Upon Representations and Warranties. All representations and warranties made in this Agreement or in any certificate or other document delivered to Agent by or on behalf of Borrower or Guarantor or any Authorizing Entity shall be true and correct when made and throughout the term of the Loan as if they were made continuously throughout such term and shall be deemed to have been relied upon by Agent and Lenders notwithstanding any investigation heretofore or hereafter made by Agent or Lenders or on any of their behalf, and shall survive the making of the Initial Disbursement and each Advance. Each request for an Advance shall constitute the remaking and reaffirmation of all such representations and warranties. Borrower acknowledges that the Initial Disbursement and each Advance is intended to be made by Agent and Lenders in reliance upon the performance of all of the terms and conditions contained herein and upon the continuing truth and accuracy of the representations, warranties, acknowledgments and agreements herein contained or otherwise made in writing to Agent.

ARTICLE 5
COVENANTS

5.1 Covenants. Borrower shall perform the following covenants, fully and faithfully, at all times until the Indebtedness has been paid in full and all Obligations fully satisfied.

5.1.1 Financial. On or before the third (3rd) Business Day after Provider is obligated to deliver any such item, Borrower shall deliver to Agent all items that Provider is obligated to deliver pursuant to Section 4.2.1, 24.2 and 24.5 of the Facility Lease (and Borrower
shall strictly enforce its rights receive all such items in accordance with the Facility Lease). In addition to the foregoing, but without duplication, Borrower shall deliver (or cause to be delivered) to Agent each of those items described in subsections (a) – (e) below.

(a) Within twenty (20) days after each calendar month, Borrower shall furnish Agent with a copy of (i) Borrower’s statement of income for the applicable month and year-to-date showing all Revenues, accrued real estate taxes and all items of operating expense, capital expenditures and reserves paid with Revenues, (ii) Borrower’s then current balance sheet, (iii) Borrower’s cash flow statement for the applicable month and year-to-date, (iv) a comparison of the budgeted income and expenses and the actual income and expenses for each month and year-to-date for the Property, together with an explanation of any variances, and (v) upon the treatment of Patients at the Facility, Patient throughput for the applicable month (including the number of fractions performed at the Facility and for which types of medical conditions, and collections from the treatment of Patients by payor type) with a comparison to the Operating Budget, together with an explanation of any variances. Until Completion of all Construction Work to be performed pursuant to the Proton System Purchase Agreement and the General Contractor’s Agreement, a written report (including an explanation of all variances described therein) setting forth (1) the current status of the installation and/or commissioning of the Proton System and (2) (A) any changes, modifications, amendments or supplements to, or variations from, the Approved Plans, the Project Budget and/or the timelines set forth on Exhibit D to the Closing Certificate of Borrower, whether or not the same are permitted to be made without Agent’s consent, since the date of the last report and (B) all Project Costs incurred for the applicable month and in the aggregate, by line item, with a comparison of the budgeted Project Costs and the actual Project Costs, by line item.

(b) Borrower shall prepare and submit to Agent such other financial statements and reports as Agent may reasonably require. All financial statements shall be in a format approved by Agent and certified as true, correct, and complete and not misleading as to Borrower’s financial condition or such other matters contained in any such statement and reports by an officer or authorized representative of Borrower approved by Agent. The monthly financial statements shall certify that there are no pending claims against Borrower or, if any such claims exist, the nature and amount of each such claim, and the amount of any Governmental Health Program recoupments or recoupments of any third-party payor being sought, requested, claimed, or threatened against Borrower. All financial statements shall be prepared in accordance with generally accepted accounting principles consistently applied.

(c) No later than thirty (30) days after the end of each calendar quarter Borrower shall furnish Agent with a copy of Borrower’s quarterly financial statements for the prior calendar quarter, and no later than April 30 of each year Borrower shall furnish Agent (i) with a copy of Borrower’s annual financial statements for the prior calendar year, including, with respect to both quarterly and annual statements, a statement of the income and expenses for Borrower and the Facility, cash flow statement and balance sheet and statement of profit and loss for Borrower and the Facility which financial statements shall be audited by McGladrey & Pullen, LLP, or another independent certified public accounting firm approved by Agent and (ii) a certificate from an officer or authorized of Borrower approved by Agent that there is no Default, Event of Default or Cash Trap Event.
(d) No later than October 5 of each year, Borrower shall prepare (or cause to be prepared) and shall deliver to Agent for Agent’s review and approval the proposed Budget for the Facility for the succeeding calendar year, along with all documentation made available to the Joint Operating Committee with respect to any such proposed Budget. In addition, Borrower shall submit to Agent for Agent’s review and approval any proposed modification or amendment to any Budget, along with all documentation made available to the Joint Operating Committee with respect to any such proposed modification or amendment. Borrower acknowledges and agrees that Agent’s approval rights with respect to any proposed Budget and with respect to any proposed modification or amendment to any Budget, which shall be exercised by Agent in good faith and shall be in Agent’s sole and absolute discretion, are set forth in Section 14 of the Multi-Party Agreement, and the parties hereto agree that in addition to the foregoing, to the extent that either the Joint Operating Committee (in accordance with the Facility Lease) or Agent (in accordance with both this subsection (d) and Section 14 of the Multi-Party Agreement) have not approved a proposed Budget, then the last sentence of Section 24.3.1 of the Facility Lease shall be operative. Any Budget, once approved by Agent, shall constitute the Operating Budget for the period covered by said Budget. Borrower shall not approve, nor suffer or permit the approval of, any Budget (or any changes to any Budget) described in the Facility Lease without the prior written approval of Agent.

(e) No later than April 30 of each year, Borrower shall cause each Guarantor to submit to Agent financial statements containing statements of income and expenses for the previous year and assets and liabilities as of the last day of the previous year. Each Guarantor shall certify their individual respective statements as true, correct and complete in all materials respects and not misleading as to their individual financial condition.

(f) Agent shall have the right at any time and from time to time to audit the financial information provided by Borrower and any Guarantor pursuant to the terms of this Agreement in accordance with the then customary audit policies and procedures of Agent using auditors selected by Agent. The Agent shall pay for the cost of its auditors; provided, however, if (A) such audit shall have been commenced during a Default, Event of Default or Cash Trap Event, or (B) such audit reveals a material discrepancy from the information previously provided to Agent, Borrower shall pay the out-of-pocket costs and expenses of such audit.

(g) Borrower shall keep and maintain separate books and records with respect to the Property. Borrower will allow Agent, its representatives or agents, at any time during normal business hours and upon reasonable prior notice, access to all books and records of Borrower, including Borrower’s books of account and all supporting and related vouchers or papers kept by or on behalf of Borrower or its representatives or agents in connection with maintenance, ownership, operation or leasing of the Property, such access to include the right to make extracts or copies thereof. At Agent’s request, Borrower shall also cause all of the financial information, statements, certificates and reports required to be delivered to Agent pursuant to this Section 5.1.1 to be delivered to Agent in electronic format.

5.1.2 Impositions.

(a) Subject to Section 2.5.8, Borrower shall pay all Impositions before the same become delinquent and upon written request, shall furnish to Agent duplicate receipts for
such payment. Unless Agent has paid such Impositions directly on Borrower’s behalf, Borrower shall furnish to Agent evidence that all Impositions are paid at least five (5) Business Days prior to the last date for payment of such Impositions and before imposition of any penalty or accrual of interest.

(b) Notwithstanding the foregoing, so long as no Event of Default or monetary Default has occurred and is then continuing, Borrower may in good faith, with reasonable diligence and at Borrower’s sole cost and expense contest the validity or amount of any Impositions, provided that:

(i) such contest prevents or suspends the collection of the Contested Taxes and the sale or forfeiture of all or any part of the Property to satisfy the payment of the Contested Taxes; and

(ii) Borrower notifies Agent in writing of Borrower’s intent to contest before any Contested Taxes have been increased by any interest, penalties or other costs; and

(iii) Borrower has deposited with Agent to be held by Agent, together with the sums provided in subsection (c) below, a sum of money which taken with the deposits already held by Agent pursuant to subsection (c) below is sufficient in Agent’s sole judgment to pay the amount of the Contested Taxes, including interest and penalties, and Borrower shall increase such deposits upon demand by Agent whenever Agent deems such additional deposit necessary to cover the cost of additional interest and penalties.

(c) If Borrower fails to pursue the proceeding for the Contested Taxes with reasonable diligence or if Borrower fails to deliver to Agent the additional deposits required in this subsection (c), Agent may, at Agent’s option, apply such additional deposits to the payment of all or any portion of the Contested Taxes, including all penalties and interest. If the amount of the additional deposits is insufficient to pay the Contested Taxes together with all interest and penalties, Borrower shall upon demand deposit an amount sufficient to make such payment of the Contested Taxes in full. Provided no Event of Default then exists and Borrower has notified Agent in writing that Borrower has obtained a final disposition of the Contested Taxes, together with an official tax bill for such Contested Taxes, Agent shall use the funds on deposit with Agent, together with the Monthly Tax Deposits relating to such Contested Taxes, to pay the Contested Taxes in full.

5.1.3 Insurance.

(a) Until the Indebtedness is fully paid and all obligations of Agent and Lenders under the Loan Documents have been finally terminated, all of the Collateral shall be kept at all times insured against loss and damage by such hazards, casualties and contingencies in such amounts, subject to such deductibles, and for such periods as may from time to time be reasonably required by Agent. All insurance shall be written in policies and by insurance companies approved by Agent. All policies of insurance and renewals thereof shall contain standard noncontributory lender or mortgagee clauses or loss payable clauses in favor of Agent, for the benefit of Lenders, and their successors and assigns and shall name Agent, for the benefit of Lenders, and their successor and assigns as an additional insured and shall provide for at least
thirty (30) days’ prior written notice of modification (including cancellation) to Agent without cost to Agent, and Agent shall be endorsed onto all such policies as a cancellation recipient, as well as a waiver of subrogation endorsement and such other endorsements as Agent shall require. All policies of insurance and renewals thereof shall contain such further endorsements as Agent may require, in form and content acceptable to Agent. Without limiting the generality of the foregoing, all policies of insurance shall be in amounts and have deductibles (if any) approved by Agent and contain clauses or endorsements to the effect that no act or negligence of Borrower, or anyone acting for Borrower or of any tenant under any Lease or other occupant, or failure to comply with the provisions of any policy which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Agent and Lenders are concerned. Copies of all policies of insurance and original certificates of insurance on ACORD forms acceptable to Agent, together with evidence of fully paid premiums, shall be delivered to Agent as issued at least thirty (30) days before the expiration of old policies and shall be held by Agent until all Obligations have been fully paid and performed and all obligations of Agent and Lenders under the Loan Documents finally terminated. Upon request by Agent, Borrower, at its sole cost and expense, shall furnish to Agent evidence of the replacement cost of the Property that is satisfactory to Agent. In case of any transfer of title to the Property either resulting from an exercise of remedies under or pursuant to the Mortgage or in lieu of such remedies, complete title to all policies of insurance required by this Agreement and to all prepaid or unearned premiums thereon shall pass to and vest in the grantee or other transferee of the Property. Agent and Lenders shall not, by reason of accepting, rejecting, approving or obtaining insurance, incur any liability for payment of losses. 

(b) Without in any way limiting the generality of the foregoing, Borrower covenants and agrees to maintain the following insurance coverage: (i) all risk of physical loss or special perils coverage insurance, for an amount equal to not less than one hundred percent (100%) of the full replacement cost of the Improvements and fixtures located on the Property, written on a replacement cost basis and with endorsements covering replacement cost (without depreciation), building ordinances/enforcement of law (including demolition and increased cost of construction, which building ordinance coverage endorsement shall be in such amount as Agent may reasonably require), vandalism, malicious mischief, terrorist acts, building collapse, boiler and machinery, sewer back up; (ii) rent loss and/or business interruption insurance in an amount equal to not less than the projected gross revenue from the Property for twelve (12) months, less any allocable charges and expenses which would not continue during the period of restoration; (iii) commercial general public liability and property damage insurance with a broad form coverage endorsement for an amount as reasonably required from time to time by Agent but not less than an aggregate amount of Ten Million Dollars ($10,000,000.00) and an occurrence limit of not less than Five Million Dollars ($5,000,000.00) combined single limit; (iv) flood insurance with coverages reasonably acceptable to Agent; (v) earthquake insurance with coverages acceptable to Agent; (vi) insurance covering pressure vessels, pressure piping and machinery, if any, and all major components of any centralized heating or air-conditioning systems located in the Improvements, in an amount satisfactory to Agent, such policies also to insure against physical damage to the Improvements arising out of peril covered thereunder; and (vii) such other insurance that may be required from time to time by Agent. All insurance policies shall be issued by an insurer licensed to do business in the jurisdiction in which the Property is located and which has a rating of at least “AA” by Standard & Poor’s and a rating of A:X or better in the current Best’s Insurance Reports. In addition to the requirements of this
Section 5.3. Borrower shall cause Agent to be named as an additional insured under Provider’s professional liability insurance described in Section 12.1.10 of the Facility Lease, and Borrower shall deliver to Agent a copy of such policy of insurance and original certificates of insurance on ACORD forms acceptable to Agent, together with evidence of fully paid premiums, at least thirty (30) days before the expiration of the then current policy.

(c) At all times prior to Completion of the Improvements and the Facility, and in connection with any other Construction Project (if required by Agent), Borrower shall have delivered to Agent a so-called Builder’s Risk Completed Value non-reporting form insurance policy for one hundred percent (100%) of the replacement value of the completed Improvements and Facility (including, without limitation, one hundred (100%) percent of the replacement cost value of all improvements and betterments, but excluding foundations and any other improvements not subject to physical damage) and shall include, without limitation, coverage for loss by testing, collapse, theft, flood, and earth movement. Such insurance policy shall also include coverage for: (i) loss suffered with respect to materials, equipment, machinery, and supplies whether on-site, in transit, or stored off-site and with respect to temporary structures, hoists, sidewalks, retaining walls, and underground property unless required to be insured by any contractor or subcontractor, and coverage for damage caused by “War” or the acts of terrorists, whether certified or uncertified; (ii) soft costs (including delayed opening) that are recurring costs, which shall include, without limitation, delayed opening loss of income/revenue coverage for a period of recovery of not less than eighteen (18) months commencing from the date the Improvements and the Facility were to be completed as approved by Agent in its sole discretion, as well as costs to reproduce plans, specifications, blueprints and models in connection with any restoration following a casualty; (iii) demolition, debris removal and increased cost of construction, including, without limitation, increased costs arising out of changes in applicable laws and codes; and (iv) operation of building laws.

(d) If at any time a dispute arises with respect to replacement cost, Borrower agrees to provide at Borrower’s expense, an insurance appraisal prepared by an insurance appraiser approved by Agent, establishing the full replacement cost in a manner satisfactory to the insurance carrier.

(e) Subject to Section 2.5.8, Borrower shall pay or cause to be paid, in a timely manner, all Premiums. At least thirty (30) days prior to the expiration of any policy of insurance, Borrower shall furnish to Agent renewal insurance policies (or Evidence of Commercial Property Insurance on ACORD 28 and a Certificate of Liability Insurance on ACORD 25) as required by this Agreement and the other Loan Documents.

(f) Borrower shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Agent, for the benefit of Lenders, is included thereon as the loss payee and an additional insured as applicable, under a standard mortgagee clause acceptable to Agent and such separate insurance is acceptable to Agent.

(g) Unless Borrower provides Agent with evidence of the insurance coverage required by this Agreement, Agent, on behalf of Lenders, may purchase insurance at Borrower’s expense to protect Agent’s and Lenders’ interest in the Property. This insurance may, but need
not, protect Borrower’s interests. The coverage Agent purchases may not pay any claim Borrower makes or any claim that is made against Borrower in connection with the Property. Borrower may later request Agent to cancel any insurance purchased by Agent, but only after providing Agent with evidence that Borrower has obtained insurance as required by this Agreement. If Agent purchases insurance required to be provided under this Agreement, Borrower will be responsible for the costs of that insurance, including interest and any other charges Agent may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness and shall bear interest at the Default Rate. The costs of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

(h) Borrower shall cooperate with Agent in all respects in obtaining for Agent on behalf of Lenders the benefits of any insurance proceeds lawfully or equitably payable in connection with the Property, and Agent shall be reimbursed for any out-of-pocket expenses reasonably incurred in connection therewith (including attorneys’ fees and disbursements, and, if necessary to collect such proceeds, the expense of an appraisal on behalf of Agent in case of a fire or other casualty affecting the Property or any part thereof) out of such insurance proceeds.

5.1.4 Leases.

(a) Without the prior written consent of Agent which may be granted or withheld in Agent’s sole and absolute discretion, Borrower shall not (i) enter into any Lease, (ii) modify, amend, renew, extend or terminate any Lease, (iii) accept any payment on a Lease for more than one month in advance of its due date, (iv) enter into any ground lease of the Property, or (v) accept the surrender of any Lease. At Agent’s request, Borrower shall cause the tenant under any Lease (other than the Facility Lease) to execute a subordination and attornment agreement in form and substance satisfactory to Agent. Borrower shall provide Agent with a copy of a fully executed original of each Lease executed subsequent to the Closing Date promptly following its execution. No later than sixty (60) days after the Closing Date, Borrower shall deliver written notice to Provider under the Facility Lease (a copy of which shall be delivered to Agent contemporaneously with its delivery to Provider) adding Agent, at Agent’s Address, as an additional required notice party of Borrower (as Manager) under Section 27.6 of the Facility Lease.

(b) Borrower shall (i) observe and perform (A) all obligations of the lessee under the Ground Sublease in full compliance with all provisions thereof and (B) all obligations of the lessor under all Leases and the Ground Lease in full compliance with all provisions thereof, and (ii) enforce all terms, provisions, covenants and conditions contained in the Leases, the Ground Lease and the Ground Sublease. Borrower will not suffer or permit any breach or default to occur in any of Borrower’s obligations under the Ground Sublease, the Ground Lease or any of the Leases nor suffer or permit the same to terminate by reason of any failure of Borrower to meet any requirement thereunder, including those with respect to any time limitation within which any of Borrower’s work is to be done or the space is to be available for occupancy by the tenant. Borrower shall promptly notify Agent in writing in the event of a default under the Ground Sublease, the Ground Lease or a Lease and, notwithstanding the foregoing, Borrower shall deliver to Agent a complete copy of each notice of default Borrower delivers in connection with the Ground Sublease, the Ground Lease or the Facility Lease at the same time as and
whenever Borrower delivers any such notice of default. Borrower will not waive any rights under the Ground Sublease, the Ground Lease or any of the Leases and will enforce the obligations of tenants under and guarantors of the Leases, including amendments approved by Agent. Borrower has not and shall not assign or pledge any Leases or the right to receive any payments thereunder except as permitted in this Agreement.

(c) Borrower shall deliver to Agent all tenant security deposits (if any), including letters of credit, which security deposits Agent shall hold pursuant to Section 2.5.7, subject in each case to the rights of the applicable tenant to the return of such security deposit in accordance with the applicable Lease. Upon forfeiture of any security deposit, the amount thereof shall be applied to the Indebtedness. All lease termination payments or fees shall be paid to Agent and shall be applied to the Indebtedness.

(d) Borrower shall deliver to Agent a complete copy, within two (2) Business Days of its receipt, of all (i) Construction Warranty Breach Notices, Equipment Default Notices and notices of Equipment Failure delivered to Borrower pursuant to Article VII of the Facility Lease, (ii) Budget Impasse Notices delivered to Borrower pursuant to Section 24.4.2(a) of the Facility Lease, (iii) Scripps Standards Notices delivered to Borrower pursuant to Section 24.4.2(b) of the Facility Lease, (iv) notices received pursuant to the Facility Lease which relate to any fact, circumstance or condition which could result in a Manager Event of Default if not remedied in accordance with the Facility Lease, (v) notices received pursuant to Sections 8.2.2, 8.5.2, 8.5.4, 9.6.2, 13.9 or 24.5(v) of the Facility Lease, (vi) default notices received by Borrower under the Ground Sublease, and (vii) notices terminating the Facility Lease or the Ground Sublease, exercising or purporting to exercise any right to terminate the Facility Lease or the Ground Sublease, or suspending or ceasing the performance of obligations under the Facility Lease or the Ground Sublease.

(e) Borrower shall deliver to Agent a complete copy of each notice Borrower delivers in connection with the Facility Lease at the same time as and whenever Borrower delivers any such notice, including, without limitation, any notice delivered by Borrower pursuant to Sections 8.2.2, 8.5.3, 8.17, 9.6.1, 13.2.1, 13.3, 13.9, 15.1.1, 15.1.9, 15.7 or 25.3 of the Facility Lease.

(f) In the event of a Performance Decline (as that term is defined in the Facility Lease) (i) Borrower shall take all action necessary under the Facility Lease to reserve its rights with respect to any such Performance Decline, (ii) Borrower shall, within five (5) Business days after its receipt thereof, deliver to Agent a copy of any corrective plan submitted to Borrower pursuant to Section 25.3 of the Facility Lease, and (iii) in the event Borrower has the right to terminate the Facility Lease pursuant to Section 25.3 of the Facility Lease, any decision by Borrower with respect to such termination right shall be subject to Agent’s prior consent.

5.1.5 Operations

(a) Borrower shall comply, and shall cause Provider to comply (in accordance with the Facility Lease), with all Applicable Laws with regard to the Property, the Project, the Provider Operations and the Facility. Without limiting the foregoing, Borrower shall obtain and maintain, or cause to be obtained and maintained, those registrations, licenses, certifications,
approvals, permits, and regulatory clearances (including any required certificates of need and certificates of exemption) (collectively, “Proton System Approvals”) required for (i) the manufacture, sale, transport, delivery, installation and commissioning of the Proton System and any subsequent modifications and additions thereto, (ii) the clinical personnel, including physicians who specialize in radiation oncology, to operate the Proton System at the Facility to provide treatment to Patients, (iii) clinical commissioning and ongoing clinical operation of the Proton System and the Facility, (iv) disposal of irradiated materials, and (v) possession, use and installation of radiation-generating machines. Borrower shall deliver to Agent evidence of its compliance with the foregoing upon Agent’s request.

(b) At all times, Guarantor and the Board of Managers shall be in charge of executing Borrower’s business plan and shall exercise operational and management control, including day-to-day business decisions, with respect to the Property and the Project, except for those duties to be performed by Provider under the Facility Lease. In addition to the foregoing, Borrower agrees that until the expiration of the Ramp-Up Period (i) Jeffrey L. Bordok shall personally devote not less than twenty-five percent (25%) of his professional responsibilities to the Project and (ii) Sarah Hutchinson, Executive Vice President of Sponsor (or another qualified person acceptable to Agent), shall devote thirty-three percent (33%) of her professional responsibilities to the Project. Borrower shall not engage the services of a property manager, enter into any property management agreement or terminate or replace any property manager or property management agreement without, in each case, Agent’s prior written consent. After the expiration of the Ramp-Up Period, Borrower shall cause the Proton System to remain fully operational and able to provide treatments to Patients so as to prevent a Material Adverse Effect and to operate the Property in conformance with the then current Operating Budget. Subject to Section 2.5.6, Borrower shall pay all Support Services Fees and all other amounts that Borrower is required to pay pursuant to the O&M Agreement before the same become delinquent and upon written request, shall furnish to Agent duplicate receipts for such payment. Unless Agent has paid such Support Services Fees and all other amounts that Borrower is required to pay pursuant to the O&M Agreement directly on Borrower’s behalf, Borrower shall furnish to Agent evidence that all such amounts are paid at least five (5) Business Days prior to the imposition of any penalty or accrual of interest.

(c) All Personal Property shall continue to be located on the Land. Borrower shall not, without the prior written consent of Agent, sell, assign, transfer, remove or permit to be removed from the Land or the Improvements any of the Personal Property, provided, so long as no Event of Default exists, Borrower may sell or otherwise dispose of the Personal Property when obsolete, worn out, inadequate, unserviceable or unnecessary for use in connection with the Project, but only upon replacing the same with other Personal Property at least equal in value and utility to the Personal Property that is disposed, and provided further that the priority and perfection of Lenders’ security interest is fully preserved in such replacement Personal Property. Borrower shall, from time to time, on request of Agent, deliver to Agent an inventory of the Personal Property in reasonable detail. All Personal Property, and all replacements thereof, substitutions therefor or additions thereto, at all times, shall be kept and maintained free and clear of Liens, except for Permitted Exceptions. Borrower shall, upon demand, execute and deliver to Agent such financing statements and other documents in form satisfactory to Agent, and will do all such acts and things as Agent may at any time, or from time to time, reasonably
request or as may be necessary or appropriate to establish and maintain Lenders’ first perfected security interest in the Personal Property, free of any Liens, except for Permitted Exceptions.

(d) Borrower shall: (i) promptly repair, restore or rebuild any Improvements now or hereafter on the Land which may become damaged or be destroyed, such restored or rebuilt Improvements to be of at least equal value and substantially the same character as prior to such damage or destruction, provided that any Loss Recoveries relating to such damage or destruction have been released to Borrower under the terms of this Agreement to effectuate such repairs or restoration, but regardless of whether such Loss Recoveries are sufficient for such repairs or restoration are available or sufficient for the purpose; (ii) keep the Property in good condition and repair and in good working order and without waste, (iii) pay all operating costs for the Property and immediately pay when due any indebtedness which may be secured by a Lien, and upon request deliver to Agent satisfactory evidence of the discharge of such Lien, subject to any right Borrower may have hereunder to contest such Lien; (iv) complete within a reasonable time any Improvements now or at any time in process of construction upon the Property (except that the Construction Work to be performed pursuant to the General Contractor’s Agreement and the Proton System Purchase Agreement shall be completed in accordance with the timelines set forth on Exhibit D to the Closing Certificate of Borrower); (v) comply with all requirements of all covenants, easements and restrictions of record with respect to the Property and the use thereof; (vi) not make any alterations (nor take any steps in preparation thereof, including, without limitation, ceasing marketing activities) to the Property or demolish any portion of the Improvements or repairs and replacements without Agent’s prior written consent, except as required by Applicable Law, repairs the cost of which do not exceed $100,000 (provided that the aggregate cost of all repairs, whether or not consented to by Agent, does not exceed $500,000) or in connection with the Construction Work to be performed pursuant to the General Contractor’s Agreement or the Proton System Purchase Agreement; (vii) not suffer or permit any change in the general nature of the use or occupancy of the Property, without Agent’s prior written consent; (viii) not initiate, seek or acquiesce in any zoning reclassification, change or variance without Agent’s prior written consent; (ix) provide and thereafter maintain adequate parking areas within the Property as may be required by Applicable Laws, together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress, and right of way to and from the adjacent public thoroughfares necessary or desirable for the use thereof, and observe and comply with any conditions necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Property and the use and occupancy of the Property; (x) not cause or permit, or file for, any resubdivision of the Land prior to satisfaction of all requirements of Applicable Laws and without Agent’s prior written consent, and not cause or permit the use of the Property for any non-conforming use under Applicable Laws; (xi) not grant, create, permit, amend or modify any easements, licenses, covenants, conditions, encumbrances or declarations affecting the Property; (xii) operate the Property and the Project in conformity with the Operating Budget then in effect; (xiii) promptly perform and observe all agreements required to be performed by it under all Material Agreements; (xiv) give Agent notice of any default under Leases and Material Agreements; (xv) not amend any document which is a Permitted Exception without in each case Agent’s prior written consent; (xvi) not permit the use of the Land by the public in such a manner that might make possible a claim of adverse use or possession or any implied declaration, easement or other right; and (xvii) promptly correct all
defects (other than of an immaterial nature that do not affect the use of the Improvements for their intended purpose or their value) in the Improvements or any departure from the Construction Documents (except for non-material deviations therefrom that do not adversely affect the use of the Improvements for their intended purpose or their value) not previously approved by Agent to the extent required hereunder (and Borrower agrees that the making of any Advance whether before or after such defects or departures are discovered by, or brought to the attention of, Agent shall not constitute a waiver of Agent’s right to require compliance with this covenant).

(e) Borrower shall cause Provider to (in accordance with the Facility Lease), engage in business of performing the Provider Operations and Borrower shall, and shall cause Provider to, preserve, renew and keep in full force and effect their respective existence and their respective rights, privileges and franchises necessary or desirable in the normal conduct of business. Without limiting the generality of the foregoing, Borrower shall cause the Facility to be and remain certified for participation in Medicare and Medicaid. Borrower shall not, and shall not permit any line of business to be conducted at the Facility, directly or indirectly, other than the Provider Operations. Borrower shall, and shall cause Provider to, take all necessary action to collect as promptly as possible all receivables from all Account Debtors and shall submit to each Account Debtor, promptly and diligently, all materials required by any such Account Debtor for payment. Borrower shall not, and shall not suffer, permit or allow Sponsor or any Affiliate of either Sponsor or Borrower, cause, facilitate or encourage any Executive Personnel (including, without limitation, the Medical Director of the Facility, the Facility’s chief physicist or any licensed physician engaged in the Provider Operations) to cease the performance of their services at the Facility. Borrower shall immediately notify Agent in writing if any Executive Personnel (including, without limitation, the Medical Director of the Facility, the Facility’s chief physicist or any licensed physician engaged in the Provider Operations) ceases the performance of their services at the Facility.

(f) Borrower shall, and shall cause Provider to, maintain all Licenses necessary to conduct the Provider Operations and in accordance with Applicable Laws, including participation in Governmental Health Programs, and shall take or cause to be taken any steps required to comply with any such new or additional requirements that may be applicable to the Provider Operations. If and as required, all Governmental Health Program cost reports will be properly and timely filed. Borrower will furnish to Agent, within five (5) days of receipt by Borrower or Provider, (i) a copy of any health care survey report related to licensure or certification (including, without limitation, each Medicare, Medicaid, Joint Commission and any other accreditation agency survey report), (ii) any statement of deficiencies pertaining to the Provider Operations, the Facility, or Borrower or Provider, and (iii) any and all notices from any licensing and/or certifying agencies that any license or permit relating to the operation of the Facility is being suspended or revoked (or threatens to do so) or that the Facility is being downgraded to a substandard category (or threatens to do so) or that any investigation or proceeding with respect to any such action is pending or threatened, and within the time period required by the particular agency for submission, Borrower shall submit or cause to be submitted to such agency and Agent a copy of the plan of correction with respect to any of the foregoing if such plan of correction is required by such agency issuing the statement of deficiency or notice. Borrower shall maintain, or shall cause Provider to maintain, all records required to be
(g) Borrower shall cause Provider to maintain on its behalf a corporate health care regulatory compliance program ("CCP") which includes at least the following components and allows Agent, Lenders and/or any outside consultants from time to time to review such CCP:
(i) standards of conduct and procedures that describe compliance policies regarding federal, state and local laws with an emphasis on prevention of fraud and abuse; (ii) the specific officer within high-level personnel identified as having overall responsibility for compliance with such standards and procedures; (iii) training and education programs which effectively communicate the compliance standards and procedures to employees and agents, including, without limitation, fraud and abuse laws and illegal billing practices; (iv) auditing and monitoring systems and reasonable steps for achieving compliance with such standards and procedures including, without limitation, publicizing a report system to allow employees and other agents to anonymously report criminal or suspect conduct and potential compliance problems; (v) disciplinary guidelines and consistent enforcement of compliance policies including, without limitation, discipline of individuals responsible for the failure to detect violations of the CCP; and (vi) mechanisms to immediately respond to detected violations of the CCP.

(h) For any contract or agreement between Borrower or Provider and any Account Debtor that is subject to the Federal Assignment of Claims Act, as amended (31 U.S.C. Section 3727) or any similar state or local law (a "Government Contract"), Borrower shall comply, and shall cause Provider to comply, with the following covenants and procedures:
(i) Borrower shall give Agent written notice of Borrower’s or Provider’s execution of or receipt of an award of a Government Contract (within ten (10) days after such Government Contract is awarded or executed, whichever is earlier);
(ii) If requested by Agent, Borrower shall, or shall cause Provider to, execute and deliver to Agent, within ten (10) days of Agent’s request, a separate assignment of the Government Contract in form and content satisfactory to Agent and using forms provided by Agent;
(iii) Agent shall have the right to send to the Account Debtor in respect of such Government Contract such notices, and request such acknowledgments of the Account Debtor, as Agent deems necessary to cause such Account Debtor to recognize the assignment of the Accounts under such Government Contract and payment rights in respect thereof to Agent, as the first and only claim against such Accounts, in accordance with the Federal Assignment of Claims Act, as amended (31 U.S.C. Section 3727) or any similar state or local law. Borrower shall cooperate, and shall cause Provider to cooperate, with Agent in sending and procuring such notice and acknowledgment; and
(iv) Borrower shall not suffer or permit to exist, and shall cause Provider to not suffer or permit to exist, any notice or claim against Accounts under a Government Contract, other than notices and claims of Agent and Lenders.
(i) Borrower shall not make, suffer or permit, and shall cause Provider to not make, suffer or permit, any of the following to occur:

(i) with respect to any certificate of need or similar certificate, license, or approval issued by any Governmental Authority for the number of beds, treatment rooms and units in the Facility or any other License or rights thereunder: (A) any sale, transfer, conveyance, alienation, pledge, assignment, mortgage, encumbrance, hypothecation or other disposition, including any transfer all or any part of the Facility’s treatment rooms to another site or location, or (B) any rescission, withdrawal, revocation, amendment or modification of or other alteration of the nature, tenor or scope, including, but not limited to, any change to the Facility’s authorized treatment rooms capacity and/or the number of treatment rooms approved by the applicable Governmental Authority or state regulator; or

(ii) services other than those provided by or through the Proton System or otherwise related to such services at the Facility, without Agent’s prior written consent.

(j) Borrower shall cause Provider to: (i) perform the Provider Operations to Patients in compliance with ethical standards, laws, rules and regulations applicable to it or any facility or location it operates; (ii) assure that each of its employees and each employee of such facility or location has all required and appropriate licenses, credentials, approvals and other certifications to perform his or her duties and services for such location and that an adequate background check has been performed on each such employee; and (iii) maintain at the Facility the number of properly trained and licensed physicians and other staff that are necessary and appropriate to conduct the Provider Operations, each of whom shall perform proton therapy treatments only at the Facility and at no other competing facility.

(k) Borrower shall notify Agent within five (5) Business Days following the occurrence of any of the following facts, events or circumstances, whether threatened, existing or pending, together with such supporting data and information as shall be necessary to fully explain to Agent the scope and nature of the fact, event or circumstance, and shall provide to Agent within five (5) Business Days of Agent’s request, such additional information as Agent shall request regarding such disclosure:

(i) the existence of any event or circumstance that causes or will foreseeably cause any covenant, representation or warranty contained in this Agreement or any of the other Loan Documents to be breached or untrue, whether or not any time period for correction or remediation is available to Borrower or Provider. Without limiting the generality of the foregoing, Borrower shall furnish or cause to be furnished to Agent copies of all reports and correspondence Borrower or Provider sends or receives relating to any loss or revocation (or threatened loss or revocation) of any qualification described in this Section 5.1.5 or any other violation or possible violation of Healthcare Laws, including any voluntary disclosure by Borrower or Provider to the Office of the Inspector General of the United States Department of Health and Human Services, a Medicare fiscal intermediary or any state’s Medicaid program of a potential overpayment or any noncompliance matter relating to a Governmental Health Program or an agreement with a Non-Governmental Payor;
(ii) the initiation of any validation review, survey, investigation, program integrity review or reimbursement audits related to Borrower or Provider by any commission, board or agency in connection with the Medicare or Medicaid programs;

(iii) any charges of patient abuse or licensing violations involving Borrower, Provider, or any member of the medical staff of the Facility;

(iv) any voluntary termination of participation in a Governmental Health Program or Non-Governmental Payor program; or

(v) the existence of any event or circumstance that causes or will foreseeably cause a reduction, limitation, or restriction in the reimburse of or payment for Medical Services provided at the Facility under any Governmental Health Program or any Non-Governmental Payor agreement, which reduction, limitation, or restriction may have a Material Adverse Effect.

(I) If there shall occur any fact, event or circumstance for which Borrower is required to give Agent notice under Section 5.1.5(k) above, or if there shall occur any breach or alleged breach of HIPAA or any Healthcare Laws, Borrower shall take (or shall cause Provider to take) such action as is necessary to validly challenge or otherwise appropriately respond to such fact, event or circumstance within any timeframe required by Applicable Laws, and shall thereafter diligently pursue the same to a favorable conclusion, all to the effect that the fact, event or circumstance giving rise to a Borrower’s notice obligation under Section 5.1.5(k), or the breach or alleged breach of HIPAA or any Healthcare Laws, shall be dismissed, rescinded, eliminated and otherwise cease to exist on that date which is the earlier to occur of (a) thirty (30) days after the date that Borrower became aware of such fact, event or circumstance, or (b) the expiration of any cure period given under Applicable Laws to cure any such breach. Provided that Borrower at all times in compliance with the foregoing covenants and diligently pursues and obtains the cure described above within the timeframe described above, the existence of any fact, event or circumstance for which Borrower is required to give Agent notice under Section 5.1.5(k), or the existence of a breach of HIPAA or any Healthcare Laws, shall not, in and of itself, constitute a breach of Borrower’s obligations hereunder unless the same shall in Agent’s good faith judgment:

(i) have a material adverse impact on a Borrower’s or Provider’s ability to accept, diagnose, treat, admit and/or retain Patients or perform the Provider Operations at the Facility;

(ii) if applicable, adversely affect Borrower’s, Provider’s or the Facility’s continued participation in the Medicaid or Medicare programs or any material Non-Governmental Payor agreement;

(iii) impair the likelihood that Accounts in general will be collected and paid in the normal course of Borrower’s or Provider’s business and upon the same schedule and with the same frequency as Provider’s recent collections history, or impair the value of any Accounts, Property or other Collateral as underwritten by Agent and Lenders on or about the Closing Date;
(iv) have occurred as a result of Borrower’s or Provider’s negligence, willful misconduct, willful breach of this Agreement or Healthcare Laws or failure to adhere to commercial reasonable standards of operations;

(v) give rise to any liability of Agent or Lenders under any Healthcare Law;

(vi) constitute a matter described in Section 5.1.5(i); or

(vii) otherwise have a Material Adverse Effect upon Borrower, Guarantor or Provider.

5.1.6 **Prohibition on Conveyances and Liens.**

(a) Borrower shall not: (i) assign or attempt to assign its rights under this Agreement and any purported assignment of this Agreement shall be void or (ii) suffer or permit (A) any change in the management (whether direct or indirect) of the Property, (B) any Transfer other than a Permitted Transfer or (C) any replacement of any Authorizing Entity without in each case the prior written consent of Agent.

(b) Without limiting the foregoing, should Borrower engage in or permit a Transfer, whether or not approved by Agent, including a Permitted Transfer, that would constitute or result in the occurrence of one or more non-exempt prohibited transactions under ERISA or the Internal Revenue Code, Borrower shall promptly (i) unwind any such Transfer upon notice from Agent or, at Agent’s option, assist Agent in obtaining such exemption(s) from the Employee Benefits Security Administration with respect to such Transfer as Agent may deem necessary or appropriate, and (ii) reimburse Agent for any expenses incurred by Agent to obtain any such exemptions. Borrower’s obligations under this subsection (b) shall survive the expiration of this Agreement and the other Loan Documents.

(c) Borrower shall not suffer or permit any mechanic’s or other lien or claim to be filed or otherwise asserted, other than the Second Lien Security Agreement, against the Property or the Collateral or any portion thereof and will promptly discharge the same if any claim for lien or any proceedings for the enforcement thereof are filed or commenced; provided, however, that so long as no Event of Default or monetary Default has occurred and is then continuing and Borrower has notified Agent in writing of its intent to contest such lien or claim, Borrower shall have the right to contest in good faith and with due diligence the validity of any such lien or claim upon furnishing to the Title Company such security or indemnity as it may require to induce the Title Company to issue an endorsement to the Title Policy insuring against all such claims, liens or proceedings; and provided further that Agent will not be required to make any further Advances unless any such mechanic’s or other liens or claims have been released or insured against by the Title Company to the sole satisfaction of Agent.

5.1.7 **Single Purpose Entity/Change in Structure.** Borrower:

(a) shall maintain its existence as a Single Purpose Entity;
(b) shall not, without the prior written consent of Agent in each case, cause or permit (i) any amendment, replacement or termination of its Organizational Documents or the Organizational Documents of any Authorizing Entity, (ii) the creation of any new membership, partnership or shareholder interests, as applicable, in Borrower or any Authorizing Entity, (iii) any dissolution, voluntary termination of its existence or involuntary termination of its existence, unless such involuntary termination is rescinded or Borrower’s existence is reinstated within thirty (30) days, (iv) any change in Borrower’s or any Authorizing Entity’s state of formation or name, (v) the sale, lease or disposition of all or substantially all of its assets, or (vi) any rescission, revocation, nullification, abrogation, termination, supersession, in full or in part, of, or any amendment or modification to, the SPE Agreement and Resolution;

(c) was and shall be organized solely for the purpose of acquiring, owning, developing, constructing, managing, operating, and financing the Property;

(d) has not engaged and shall not engage in any business unrelated to the acquisition, ownership, development, construction, management, operation and financing of the Property;

(e) has not had and shall not have any assets other than those related to the Property;

(f) shall have at least two Special Representatives, and has not caused or allowed and without the consent of all Special Representatives shall not cause or allow the Board of Managers to take any action described in Section 4.1(b) of Borrower’s Amended and Restated Limited Liability Company Agreement;

(g) has not, and without the unanimous consent of its Board of Managers and all Special Representatives, shall not, with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest, take any Bankruptcy Action;

(h) has remained and shall remain solvent and shall pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due, and shall maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(i) has not failed and shall not fail to correct any known misunderstanding regarding the separate identity of Borrower;

(j) has maintained and shall maintain its accounts, books and records separate from any other Person and will file its own tax returns;

(k) has maintained and shall maintain its books, records, resolutions and agreements as official records;

(l) except as contemplated in the Facility Lease, has not commingled and shall not commingle its funds or assets with those of any other Person and has not participated
and shall not participate in any cash management system with any other Person (except pursuant to the Loan Documents);

(m) has held and shall hold its assets in its own name;

(n) has conducted and shall conduct its business in its name only, and has not and will not use any trade name, except as contemplated by the Facility Lease;

(o) (A) has maintained and shall maintain its financial statements, accounting records and other entity documents separate from those of any other Person; (B) has shown and shall show, in its financial statements, its asset and liabilities separate and apart from those of any other Person; and (C) has not permitted and shall not permit its assets to be listed as assets on the financial statement of any of other Person except as required by generally accepted accounting principles;

(p) has paid and shall pay its own liabilities, including the salaries of its own employees, out of its own funds and assets;

(q) has observed and shall observe all limited liability company formalities;

(r) has and shall have no indebtedness other than unsecured trade payables in the ordinary course of its business which (1) do not exceed, at any time, $50,000 and (2) are paid within (30) days of the date incurred;

(s) has not and shall not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

(t) has not and shall not acquire obligations or securities of its partners, members or shareholders;

(u) has allocated and shall allocate fairly and reasonably shared expenses, including shared office space;

(v) has not pledged and shall not pledge its assets for the benefit of any other Person except in connection with the Loan;

(w) has maintained and used and shall maintain and use separate stationery, invoices and checks bearing its name to collect its funds or pay its expenses and such stationery, invoices and checks shall bear its own name and shall not bear the name of any other entity unless such entity is clearly designated as being Borrower’s agent;

(x) has held itself out and identified itself and shall hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;
(y) has maintained and shall maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(z) has not made and shall not make loans to any Person;

(aa) has not identified and shall not identify its members or any Affiliate of any of them, as a division or part of it;

(bb) has not entered into or been a party to, and shall not enter into or be a party to, any transaction with its members or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arm’s-length transaction with an unrelated third party, and which are approved by Agent;

(cc) has not had and shall not have any of its obligations guaranteed by any Affiliate except pursuant to the Loan Documents;

(dd) has not formed, acquired or held and shall not form, acquire or hold any subsidiary;

(ee) has complied and shall comply with all of the terms and provisions contained in its Organizational Documents, including, without limitation, the SPE Agreement and Resolution. The statements of facts contained in Borrower’s Organizational Documents are true and correct and will remain true and correct;

(ff) shall consider the interests of its creditors in connection with all limited liability company actions, as applicable and its Special Representatives shall owe duties to such entity as a stand-alone business entity, shall not consider the interests of the members or any direct or indirect beneficial owner of the members and shall consider the interests of Agent and Lenders;

(gg) shall provide in its Organizational Documents that upon the occurrence of a Bankruptcy Action, relief from the automatic stay arising under section 362 of the Bankruptcy Code shall automatically be granted in favor of Agent and Lenders, and their successors and/or assigns, and Borrower (a) shall consent to and not contest or oppose any motion made by Agent, on behalf of Lenders, for such relief and shall not seek to reinstate the automatic stay pursuant to section 105 or any other provision of the Bankruptcy Code, and (b) acknowledges and agrees that the occurrence or existence of an Event of Default under any of the Loan Documents shall, in and of itself, constitute “cause” for relief from the automatic stay pursuant to section 362(d)(1) of the Bankruptcy Code;

(hh) shall at all times have two (2) Special Representatives. In the event of the death, incapacity, resignation or removal of a Special Representative, a replacement Special Representative shall promptly be appointed and no action requiring the consent of the Special Representative shall be taken until a replacement Special Representative has been appointed. Any Special Representative appointed by Borrower must be reasonably acceptable to Agent. In
(ii) shall have two Special Members in accordance with the SPE Agreement and Resolution.

Notwithstanding Section 5.1.7(b) above, no later than one (1) year after the Closing Date, Borrower shall cause its Organizational Documents to be amended (such amendment being subject to Agent’s prior written approval) to provide that, without the additional consent or approval of the members of Borrower, Borrower’s Organizational Documents may be further amended solely by the Board of Managers to comply with any prospective lender’s requirements regarding Borrower’s status as a Single Purpose Entity.

At no time during the term of the Loan shall the size of the Board of Managers be increased and Borrower shall obtain Agent’s prior written approval of each replacement of any members of the Board of Managers who are currently executive management personnel of Sponsor. Further, neither the Board of Managers, nor any member of the Board of Managers, shall take any action (or facilitate, solicit or cause any action to be taken) to coerce or unduly influence the granting or withholding of consent by any of the Special Representatives in connection with any matter requiring the consent of the Special Representatives, provided that this provision will not prohibit Borrower from advocating its position with the Special Representatives without coercion or undue influence.

5.1.8 Environmental Matters. Borrower will:

(a) not install, use, generate, manufacture, produce, store, release, discharge or dispose of on, under or about the Property, nor transport to or from the Property, any Hazardous Substance nor allow any other person or entity to do so except for routine cleaning supplies in customary amounts and any other Hazardous Substances required in the normal course of business of the operation of the Facility; provided that all such cleaning supplies and other Hazardous Substances shall be stored, generated, handled, used and disposed of in accordance with all Applicable Laws;

(b) keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of, any Environmental Law;

(c) give prompt notice to Agent of (i) any proceeding, investigation or inquiry commenced by any governmental authority with respect to the presence of any Hazardous Substance on, under or about the Property or the migration thereof to or from adjoining property; (ii) all claims made or threatened by any individual or entity against Borrower or the Property relating to any loss or injury allegedly resulting from any Hazardous Substance; (iii) the discovery by Borrower of any occurrence or condition on any real property adjoining or in the vicinity of the Property which might cause the Property or any part thereof to be subject to any restriction on the ownership, occupancy, transferability or use of the Property under any Environmental Law; and (iv) any written notice received (and Borrower shall promptly deliver to Agent a copy of such notice) by or on behalf of Borrower from any Governmental Authority with respect to any Hazardous Substance alleged to exist at or emanate from the Property;
(d) grant to Agent the right and privilege to: (i) join in and participate in, as a party if it so elects, any one or more legal proceedings or actions initiated with respect to the Property under any Environmental Law; and (ii) have all costs and expenses thereof (including without limitation Agent’s and Lenders’ reasonable attorneys’ fees and costs) paid by Borrower; and

(e) immediately give notice to Agent of any potential safety hazard or unsafe condition of which it becomes aware relating to or involving the Proton System and diligently correct or cause to be corrected any such condition that is found to exist.

5.1.9 **Terrorism and Anti-Money Laundering.**

(a) Borrower shall, and shall cause all Authorizing Entities to, comply with applicable federal anti-terrorism and anti-money laundering laws and regulations. All payments by Borrower to Agent or from Agent to Borrower will only be made in Borrower’s name and to and from a bank account of a bank based or incorporated in or formed under the laws of the United States or a bank that is not a “foreign shell bank” within the meaning of the U.S. Bank Secrecy Act (31 U.S.C. § 5311 et seq.), as amended, and the regulations promulgated thereunder by the U.S. Department of the Treasury, as such regulations may be amended from time to time.

(b) Borrower shall provide Agent, from time to time, with such information as Agent determines to be necessary or appropriate to comply with the anti-money laundering laws and regulations of any applicable jurisdiction, or to respond to requests for information concerning the identity of Borrower, any Authorizing Entity or other person or entity controlling or controlled by Borrower or any person or entity having a beneficial interest in Borrower, from any governmental authority, self-regulatory organization or financial institution in connection with its anti-money laundering compliance procedures, or to update such information.

(c) Borrower shall promptly notify Agent in writing should Borrower become aware of any change in the information set forth in these representations.

5.1.10 **Anti-Forfeiture.** Borrower represents and warrants to Agent and Lenders that there has not been committed by Borrower or any other person in occupancy of or involved with the operation or use of the Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Property or any other Collateral or any monies paid in performance of Borrower’s obligations under the Loan Documents. Borrower shall not commit, permit or suffer to exist any act, omission, or circumstance affording such right of forfeiture. In furtherance thereof, Borrower hereby indemnifies Agent and Lenders and agrees to defend with counsel acceptable to Agent at Borrower’s sole cost and hold Agent and Lenders harmless from and against any loss, damage or injury (including without limitation attorneys’ fees and costs incurred by Agent and Lenders) by reason of the breach of the covenants and agreements or the representations and warranties set forth in this paragraph. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Borrower or all or any part of the Collateral under any federal or state law for which forfeiture of the Property or any other Collateral or of any monies paid in performance of Borrower’s obligations under the Loan

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5.1.11 Assumption in Non-Consolidation Opinion. Borrower and Advanced Particle Therapy LLC, a Nevada limited liability company shall each conduct its business so that the assumptions (with respect to each Person) made in that certain substantive non-consolidation opinion letter dated the date hereof delivered by Borrower’s Counsel in connection with the Loan, shall be true and correct in all respects.

5.2 Construction Projects.

5.2.1 Construction Documents. Borrower shall diligently and continuously pursue and Complete each Construction Project (and each component thereof) in compliance with the timelines set forth on Exhibit D to the Closing Certificate of Borrower, the Approved Plans, the Construction Documents and all Applicable Laws. Borrower shall not enter into, accept or permit any Change Orders (other than those Change Orders included in the definition of “General Contractor’s Agreement”) without first obtaining Agent’s written consent, except that Agent’s prior consent shall not be required for any Change Order for less than $100,000 provided that the aggregate value of all Change Orders, whether or not consented to by Agent, for the subject Construction Project does not exceed $250,000. Borrower shall deliver to Agent the Construction Consultant prior notice of all Change Orders, irrespective of whether the same require the prior approval of Agent pursuant to this Agreement. All Construction Contracts shall provide for a guaranteed maximum price and shall otherwise be in form and substance satisfactory to Agent. At Agent’s election, Borrower shall cause any or all Construction Contracts to be collaterally assigned to Agent. Borrower shall submit all Construction Documents to Agent for all Construction Projects. Borrower shall not amend, modify, terminate, release or waive any of its rights, or any duties or obligations of any other Person, under any Construction Documents. Borrower shall perform its obligations under the Construction Documents and shall enforce all of the terms of the Construction Documents. Except as otherwise expressly provided herein, Borrower shall not permit any deviations from the Approved Plans without Agent’s prior written consent.

5.2.2 Permits. Borrower shall pay for and obtain or cause to be paid for and obtained all permits, licenses and approvals required by Applicable Laws with regard to each Construction Project, whether necessary for commencement, completion, use or otherwise.

5.2.3 Contractors. Borrower shall obtain Agent’s approval of all contractors and all contracts and other Construction Documents for each component of the Construction Work. All Construction Documents for each component of the Construction Work shall be assigned to Agent, for the benefit of Lenders, as security for the Loan, which assignments shall be consented to by the applicable contractor(s). Each contractor or subcontractor performing any of the Construction Work shall be licensed by the appropriate state agency and shall provide Borrower with evidence of adequate liability insurance. Upon Agent’s request, Borrower shall provide written evidence that each contractor and subcontractor meets the requirements of this subsection. Agent hereby acknowledges that it is has approved the General Contractor and the General Contractor’s Agreement.

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5.2.4 **Deficiency.** Borrower agrees that, if for any reason Agent concludes in its sole and absolute discretion that a Deficiency shall exist, regardless of how such condition may have been brought about, Borrower shall, within five (5) days after written request by Agent and prior to the disbursement of any further Advances or any other funds held by Agent, deposit the amount of the Deficiency in cash with Agent which deposit shall not bear interest. Such deposit shall first be fully utilized to pay Project Costs before any further Advance shall be made.

5.2.5 **Consultants.** At Borrower’s sole cost and expense (provided that in connection with any Advance, Borrower’s sole payment obligation with respect to any Construction Consultant shall be Borrower’s obligation pursuant to Section 3.2.1(h)), Agent shall have the right to employ a Construction Consultant with respect to each and every Construction Project. Borrower acknowledges that (i) any Construction Consultant will be retained by Agent to act as a consultant and only as a consultant to Agent in connection with the construction of the Improvements and shall have no duty to Borrower, (ii) no Construction Consultant shall in any event have any power or authority to give any approval or consent or to do any other act or thing which is binding upon Agent or Lenders, (iii) Agent reserves the right to make any and all decisions required to be made by Agent under this Agreement and to give or refrain from giving any and all consents or approvals required to be given by Agent under this Agreement and to accept or not accept any matter or thing required to be accepted by Agent under this Agreement, and without being bound or limited in any manner or under any circumstance whatsoever by any opinion expressed or not expressed, or advice given or not given, or information, certificate or report provided or not provided, by a Construction Consultant with respect thereto, (iv) Agent reserves the right in its sole and absolute discretion to disregard or disagree, in whole or in part, with any opinion expressed, advice given or information, certificate or report furnished or provided by a Construction Consultant to Agent or any other person or party, and (v) Agent reserves the right to replace any Construction Consultant with another construction consultant at any time and without prior notice to or approval by Borrower. Agent shall use commercially reasonable efforts to cause any Construction Consultant to respond diligently and promptly with respect to any matter which any such Construction Consultant has been engaged.

The fees of any Construction Consultant shall be paid by Borrower within thirty (30) days after billing therefor and expenses incurred by Agent on account thereof shall be reimbursed to Agent within thirty (30) days after request therefor, but neither Agent nor any Construction Consultant shall have any liability to Borrower on account of (i) the services performed by such Construction Consultant, (ii) any neglect or failure on the part of any Construction Consultant to properly perform its services or (iii) any approval by any Construction Consultant of construction of the Improvements. Neither Agent nor any Construction Consultant assumes any obligation to Borrower or any other Person concerning the quality of construction of the Improvements or the absence therefrom of defects.

5.2.6 **Notices.**

(a) Borrower shall deliver to Agent a copy, within three (3) Business Days of its receipt, of any default notice, notice of lien or demand for past due payment from any contractor, subcontractor or materialman and any notice received from the General Contractor or the Proton Equipment Vendor relating to any Construction Work or the Proton Equipment Vendor Documents, including, without limitation, any RFE Readiness Document, any notice
delivered to Borrower pursuant to Sections 3.2, 6, 8.5, 11.2.1, 11.2.2, 16.2.1, 16.2.2, 18.3, 22.1, 24.3 and 26.4 of the Proton System Purchase Agreement, any notice delivered to Borrower pursuant to Sections 4.4, 6.2.1, 6.2.6.2, 7.4.1, 7.4.2, 8.3, 11.1 and 12 of the O&M Agreement, and any notice delivered to Borrower pursuant to Sections 4.1.1, 4.2.2, 10.1.1, 11.3.2 and 11.4.2 of the General Conditions to the General Contractor’s Agreement.

(b) Borrower shall deliver to Agent a complete copy of each notice Borrower delivers in connection with any Construction Work or the Proton Equipment Vendor Documents, at the same time as and whenever Borrower delivers any such notice, including, without limitation, any notice delivered by Borrower pursuant to Sections 3.2, 4.5.1, 6, 11.2.6.2, 16.1.1, 18.3, 22.1 and 26.4 of the Proton System Purchase Agreement, any notice delivered by Borrower pursuant to Sections 6.2.6.2, 7.3.1.1, 8.3, 11.1 and 12 of the O&M Agreement, and any notice delivered by Borrower pursuant to Section 8.1 of the Standard Form of Agreement of, and Sections 2.10.2, 3.1.3, 3.4.1, 6.3.1, 7.3.1, 10.1.1 and 11.2.2 of the General Conditions to General Contractor’s Agreement.

5.3 General Covenants.

5.3.1 Inspections. Borrower will cooperate with, and not in any way restrict or interfere with, Agent in arranging for any inspections, from time to time, of the Property or any portion thereof and each portion of any and all Construction Projects, by representatives of Agent, including the inspections and the tests described in Section 3 of the Environmental Indemnity. Borrower will, and will cause Provider, the General Contractor, all subcontractors, the Proton Equipment Vendor and all other Persons (and Agent shall have the right to directly communicate with any of the foregoing) to, cooperate with Agent and the Construction Consultant in arranging for any and all such inspections, including without limitation, to be present for the installation, testing and commissioning of the Proton System and to assist in ascertaining compliance of the Project and the Property with Applicable Laws and all Construction Documents.

5.3.2 Further Assurances. Borrower shall, from time to time, upon Agent’s request, execute, deliver, record and furnish, or cause to be executed, delivered, recorded and furnished, such documents, instruments, assignments and other items as Agent may reasonably deem necessary or desirable (i) to evidence, perfect, and maintain perfected, preserve and protects valid first liens upon the Collateral, (ii) to correct any errors of a typographical nature which may be contained in any of the Loan Documents, and (iii) to consummate fully the transaction contemplated under this Agreement, including, without limitation, the redelivery to Agent of any item previously delivered to Agent.

5.3.3 Interest Rate Agreements. In the event Borrower enters into any interest rate hedge agreement, interest rate cap agreement, interest rate collar agreement or similar agreements regarding all or any part of the Indebtedness, Borrower shall notify Agent that Borrower has entered into such an agreement and at Agent’s request shall assign such agreement, in the form and substance required by Agent, to Agent, for the benefit of Lenders, as additional security for the Loan.
5.3.4 **Stamp Tax.** If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Borrower, any tax is due or becomes due in respect of the Loan, the granting of the Mortgage, or the terms of any of the other Loan Documents, Borrower shall pay such tax in the manner required by any such law. Borrower further covenants to reimburse Agent and Lenders for any sums which Agent or Lenders may expend by reason of the imposition of any tax on the issuance of the Notes made pursuant to this Agreement. Notwithstanding the foregoing, Borrower shall not be required to pay any income or franchise tax of Agent or Lenders.

5.3.5 **Reports.** Borrower shall deliver, or cause to be delivered, to Agent copies of all inspections, reports, test results and other material information prepared or received by any Borrower Party from time to time from its owners, agents, representatives, architects, engineers, Provider, the Proton Equipment Vendor or any other parties which in any way relate to the Property or the other Collateral or any part thereof.

5.3.6 **Indemnity.** Borrower shall indemnify Agent and Lenders and hold harmless Agent and Lenders from and against all claims, expense, judgment, suit, injury, damage, loss and liability of any and every kind whatsoever suffered, paid or incurred by reason of, in connection with or arising out of, directly or indirectly, (i) the Loan, including the administration thereof, this Agreement, the other Loan Documents and/or the Property or other Collateral, and the use or application of the Loan proceeds; (ii) the operation, construction, installation, commissioning, ownership, leasing, repair and/or maintenance of the Property or other Collateral, including inspection fees; (iii) any breach or violation by Borrower of its obligations under, or any misrepresentation by any Borrower Party contained in, this Agreement or the other Loan Documents; or (iv) any other action or inaction by, or matter which is the responsibility of, any Borrower Party. Borrower shall pay Agent and Lenders upon demand all claims, judgments, costs, liabilities, damages, losses and expenses (including court costs and reasonable attorneys’ fees) suffered, paid or incurred by Agent or Lenders as a result of any legal or other action arising out of matters described in clauses (i) through (iv) of the preceding sentence, but excluding in all instances any such matter arising as a result of Agent’s or any Lender’s gross negligence or willful misconduct. The provisions of this Section 5.3.6 shall survive repayment of the Indebtedness without restriction.

5.3.7 **No Dividends or Distributions.** Except for (i) operating Revenues available to Borrower under Section 2.6, if any, or (ii) dividends, distributions and payments expressly permitted by this Agreement (and subject to the terms, limitations and restrictions contained in this Agreement) or otherwise approved by Agent, Borrower shall not make or permit, and shall not be entitled to, any dividends, distributions or payments of any kind to any member of Borrower, Guarantor, or any Affiliate thereof, or any other Person. Under no circumstance shall Borrower make any such dividends, distributions or payments after the occurrence of an Event of Default, during the pendency of a Cash Trap Event or in the event there are any amounts then due and payable to Ground Lessee under the terms of the Ground Sublease or any accrued and unpaid amounts relating thereto.

5.3.8 **Notice of Proceedings.** Borrower shall promptly notify Agent of (i) each action, suit or proceeding threatened in writing, filed or commenced as a result of injury, damage or liability occurring in, on or about the Property, other than actions for insured claims of under
$100,000 which have been accepted by the insurance carrier without reservation of liability, and (ii) any other action, suit or proceeding against Borrower or Guarantor or otherwise involving the Property or other Collateral. Borrower shall, upon Agent’s request, at Borrower’s expense, resist and defend such actions, suits or proceedings, or cause the same to be resisted and defended by counsel designated by Borrower and approved in writing by Agent.

5.3.9 **Appraisals.** Agent shall have the right to obtain a new or updated Appraisal of the Property and the other Collateral (or any part thereof) from time to time. Borrower shall cooperate and cause Provider, the Proton Equipment Vendor and all other Persons to cooperate with Agent in this regard. If the Appraisal is ordered or obtained prior to the Closing Date or in order to comply with any applicable law or regulatory requirement, or if an Event of Default exists, Borrower shall pay for any such Appraisal upon Agent’s request.

5.3.10 **Affiliate Transactions.** Prior to entering into any agreement with an Affiliate pertaining to the Property, Borrower shall deliver to Agent a copy of such agreement, which shall be satisfactory to Agent in its sole discretion. If requested by Agent, such agreement shall provide Agent the right to immediately terminate such agreement (without cost, charge or penalty) upon Agent’s (or its designee’s) taking possession of the Property or acquisition of the Property through foreclosure, a deed in lieu of foreclosure, sale in accordance with the Code or otherwise. Borrower shall not enter into any oral agreements with an Affiliate pertaining to the Property.

5.3.11 **Notice of Default.** Borrower shall promptly upon acquiring knowledge thereof notify Agent in writing of (a) any default under any Material Agreement, (b) any change in the condition (financial or otherwise) of any Borrower Party that could be expected to have a Material Adverse Effect or materially impair its ability to comply with its obligations under this Agreement or any of the other Loan Documents, or (c) of the occurrence of any Default or Event of Default or the occurrence of any circumstance which would make any representation made in this Agreement or any other Loan Document untrue or constitute a breach of any warranty made in this Agreement or any other Loan Document in any material respect. Without the prior written consent of Agent which may be granted or withheld in Agent’s sole and absolute discretion, Borrower shall not terminate, surrender, amend or modify, or waive any rights or release any obligations under, any Material Agreement.

5.3.12 **Estoppel Statement.** After written request by Agent, Borrower shall within fifteen (15) Business Days furnish Agent with a statement, duly acknowledged and certified to Agent and Lenders, setting forth (i) the unpaid principal amount of the Loan, (ii) the date installments of interest and/or principal were last paid, (iii) that the Loan Documents to which Borrower is a party are valid, legal and binding obligations, subject to insolvency laws and general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law), and have not been modified or, if modified, giving particulars of such modification, and (iv) such other matters as Agent may reasonably request. Any prospective purchaser, assignee or participant of any interest in the Loan shall be permitted to rely on such certificate. Borrower shall request and use reasonable good faith efforts to obtain for Agent, upon request, estoppel certificates from any tenant, Provider and the Proton Equipment Vendor in the form set forth on a form reasonably approved by Agent.

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5.3.13 **Place of Business.** Borrower shall not change its executive office or its principal place of business without giving Agent at least thirty (30) days’ prior written notice thereof and promptly providing Agent such information as Agent reasonably requests in connection therewith.

5.3.14 **Cooperate in Legal Proceedings.** Borrower shall cooperate in all reasonable respects with Agent with respect to any proceedings before any court, board or other Governmental Authority that may in any way affect the rights of any Lender or Agent hereunder or under the other Loan Documents and, in connection therewith, permit any Lender or the Agent, at its election, to participate in any such proceedings.

5.3.15 **Debt Cancellation.** Borrower shall not cancel or otherwise forgive or release any material claim or material debt owed to it in connection with the Property, including any arising under any of the Leases and Material Agreements except (i) with respect to such Leases and Material Agreements, in accordance with and subject to the terms of this Agreement, and (ii) with Agent’s consent, with respect to other matters, for adequate consideration in the ordinary course of such Person’s business and on commercially reasonable terms, subject to other restrictions contained herein or in any other Loan Document.

5.3.16 **Operating Obligations.** Except for the Ground Sublease or as otherwise expressly permitted under this Agreement, Borrower shall not enter into, assume or permit to exist, any obligations for the payment of rent for any property (real, personal or mixed, tangible or intangible) under leases, subleases or similar arrangements as lessee other than operating leases, equipment leases and similar leases entered into in ordinary course of business for assets incidental to the management and operation of the Property which, in each case, would not constitute a Material Agreement.

5.4 **Loss of Notes or other Loan Documents.** Upon notice from Agent of the loss, theft, or destruction of any Note and upon receipt of an affidavit of lost note and an indemnity reasonably satisfactory to Borrower from Agent, or in the case of mutilation of any Note, Borrower shall make and deliver a new note of like tenor in lieu of the then to be superseded Note. If any of the other Loan Documents were lost or mutilated, Borrower agrees to execute and deliver replacement Loan Documents in the same form of such Loan Document(s) that were lost or mutilated.

**ARTICLE 6**

**CASUALTIES AND CONDEMNATION**

6.1 **Agent’s Election to Apply Loss Recoveries on Indebtedness.**

(a) Agent is authorized to collect and receive any and all Loss Recoveries. Subject to the provisions of Section 6.1(b) below, Agent may elect to collect, retain and apply to the Indebtedness all Loss Recoveries. Any Loss Recoveries remaining after repayment of the Indebtedness shall be paid by Agent to Borrower. Notwithstanding anything contained herein or in any of the other Loan Documents to the contrary, Borrower, Agent and Lenders acknowledge and agree that any Loss Recoveries not used for the repair, restoration, construction, reconstruction or rebuilding of the Improvements and which would be paid to Borrower (and not
applied against the Indebtedness) shall be subject to, and first be applied pursuant to, Section 3.3 of the Ground Sublease and Agent and Lenders agree to act in accordance therewith.

(b) Agent agrees to make available the Loss Recoveries for restoration of the Improvements if (i) no Default or Event of Default or Cash Trap Event exists, (ii) the entire amount of the Loss Recoveries is deposited with Agent, (iii) in Agent’s reasonable judgment, the amount of the Loss Recoveries available for restoration is sufficient to pay the full and complete costs of such restoration, or if not sufficient, Borrower has deposited with Agent an amount, which together with the amount of the Loss Recoveries available for restoration of the Improvements, in Agent’s reasonable judgment, will be sufficient to pay the full and complete costs of such restoration, (iv) in Agent’s reasonable judgment, the projected Revenue or income from the Property resulting from Provider Operations will not, following restoration, result in a Cash Trap Event described in and pursuant to clause (v) or (w) (whichever is applicable) of the definition of “Cash Trap Event” in Schedule 1.2 as a result of such casualty or condemnation, (v) the cost of restoration will not exceed thirty percent (30%) of the amount of the Loan funded as of the date of such casualty, (vi) in Agent’s sole determination and estimation upon completion of restoration the Loan Amount will not exceed seventy five percent (75%) of the fair market value of the Property, (vii) in Agent’s reasonable determination, the Property can be restored to an architecturally and economically viable project in compliance with Applicable Laws within one (1) year, (viii) Guarantor reaffirms in writing Guarantor’s obligations under the Loan Documents, and (ix) in Agent’s reasonable determination, such restoration will be completed not later than six (6) months prior to the Maturity Date (exclusive of any exercise of any Extension Option).

(c) In case of loss or damage by fire or other casualty, Borrower shall promptly give Agent and the insurance companies that have insured against such risks, notice of such loss or damage, and Agent is authorized:

(i) If a Default, Event of Default or Cash Trap Event has occurred and is continuing, to settle and adjust any claim under insurance policies which insure against such risks; or if no Default, Event of Default or Cash Trap Event then exists to participate in all negotiations regarding settlement and adjustment of claims under insurance policies and approve any settlement; or

(ii) to allow Borrower, with Agent’s consent, to agree with the insurance company or companies on the amount to be paid in regard to such loss; provided that Borrower shall not make any settlement with any insurance company without Agent’s consent.

(d) Borrower shall cooperate with Agent in all reasonable respects in obtaining for Agent the benefits of any insurance proceeds lawfully or equitably payable in connection with the Property, and Agent shall be reimbursed for all out-of-pocket expenses incurred in connection therewith (including attorneys’ fees and disbursements, and, if reasonably necessary to collect such proceeds, the expense of an appraisal on behalf of Agent in case of a fire or other casualty affecting the Property or any part thereof) out of such as recoveries.
6.2 **Borrower to Restore.**

(a) In the event Agent does not elect to apply or does not have the right to apply the Loss Recoveries to the Indebtedness, as provided in Section 6.1 above, Borrower shall:

(i) Subject to Section 6.1(c) above, proceed with diligence to make settlement with insurers or the appropriate governmental authorities and cause the Loss Recoveries to be deposited with Agent;

(ii) In the event the Loss Recoveries and the available proceeds of the Loan are insufficient to assure Agent that all contemplated repairs or construction will be completed, promptly deposit with Agent any amount necessary to assure that such contemplated repairs or construction will be completed; and

(iii) Promptly proceed with the resumption of any affected Construction Project of the improvements and/or the repair of all damage resulting from such fire, condemnation or other cause and restoration to its former condition.

(b) Any request by Borrower for a disbursement by Agent of Loss Recoveries and funds deposited by Borrower shall be treated by Agent as if such request were for an Advance with respect to a Construction Project, and the disbursement thereof shall be conditioned upon Borrower’s compliance with and satisfaction of the same conditions precedent as would be applicable under this Agreement for an Advance with respect to a Construction Project and subject to any other reasonable disbursement conditions as Agent may impose. If Loss Recoveries shall exceed the amount necessary to complete the repair, restoration or rebuilding of the Improvements, such excess shall be applied on account of the Indebtedness irrespective of whether such Indebtedness is then due and payable. If Loss Recoveries shall be insufficient to fully pay for all costs necessary to complete the repair, restoration or rebuilding of the Improvements, the difference shall be treated as a Deficiency.

(c) No casualty, condemnation or application of Loss Recoveries shall excuse Borrower from complying with all Obligations under the Loan Documents.

(d) All Loss Recoveries not applied to the Indebtedness shall be held by Agent and shall be deemed to be Deposits.

(e) If Agent elects pursuant to the terms hereof to apply the Loss Recoveries to the Indebtedness, no payment of the Exit Fee or Minimum Interest Lookback Amount shall be due with respect to the amount so applied by Agent.

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**ARTICLE 7**

**DEFAULT**

7.1 **Events of Default.** Each of the following shall constitute an “Event of Default” under this Agreement:

(a) Borrower fails (1) to pay within five (5) days of the date due any installment of principal or interest, (2) to pay all principal or interest due on the Maturity Date,
(3) to pay when due any other amount due Agent hereunder or under any other Loan Document, or (4) to make any deposit as and when required by Sections 2.5.1, 2.5.2, 2.5.3, 2.5.4, 2.6, 5.1.2(b) or (c), 5.1.4(c) or 5.2.4.

(b) Borrower breaches or defaults under any of the terms or provisions of Sections 2.6, 5.1.1, 5.1.2, 5.1.3, 5.1.5(d)-(xi), 5.1.5(e), (f), (g), (h), (i), (k), or (l), 5.1.6(a), 5.1.6(c), 5.1.7, 5.1.9, 5.3.1, 5.3.7, or 5.3.13 of this Agreement; or

(c) Borrower breaches, defaults under or fails to keep or perform any agreement, undertaking, obligation, covenant, condition, term or provision of this Agreement other than those otherwise described in this Section 7.1, and such breach, default or failure continues for a period of thirty (30) days after written notice from Agent; provided that if Borrower has promptly commenced all appropriate actions to cure the default within such cure period and those actions are thereafter diligently and continuously pursued by Borrower in good faith, then such thirty (30) day cure period shall be extended for such period of time as may be reasonably required to effect a cure (but in no event more than ninety (90) days from the date of the default if the breach, default or failure is of a nature that it cannot be cured by the payment of money or cured within the cure period solely for reasons outside of Borrower's control; provided, further, however, that notwithstanding anything contained herein to the contrary, in the case where any such breach, default or failure results in an immediate risk to health or safety, no cure period shall be provided; or

(d) any representation, warranty or certification, made or given pursuant to any Loan Document by or on behalf of Borrower or Guarantor or otherwise made by or on behalf of Borrower or Guarantor or any document delivered to induce Agent and Lenders to enter into this Agreement or make the Initial Disbursement or any Advance or in connection with or as contemplated by this Agreement, proves to be untrue or fraudulent in any material respect at any time when such representation, warranty or certification is made or deemed reaffirmed hereunder or such document is delivered; provided that if the circumstances causing such misrepresentation or warranty are capable of cure and Borrower is curing such circumstance, such representation and warranty continues to be untrue ten (10) days after written notice from Agent to Borrower (except that it shall be an immediate Event of Default without any notice to Borrower or an opportunity to cure if any such representation, warranty or certification was fraudulent when made, given or reaffirmed); or

(e) Borrower, Provider or the Proton Equipment Vendor shall fail to comply with any requirement of Applicable Law or of any Governmental Authority having jurisdiction within thirty (30) days after Borrower, Provider or the Proton Equipment Vendor has notice of such requirement or should have known of such requirement, except for failures which do not have a Material Adverse Effect; or

(f) Borrower enters into any secondary or additional financing agreements or arrangements of any kind whatsoever without the prior written consent of Agent; or

(g) except for delays occasioned by Force Majeure Events, Borrower fails to Complete the Improvements in accordance with the timelines set forth on Exhibit D to the Closing Certificate of Borrower (excepting any failure to meet any interim or intermediate
construction dates or deadlines so long as in Agent’s reasonable judgment any such failure to meet any interim or intermediate construction dates or deadlines will not cause Borrower to fail to Complete the Improvements in accordance with the timelines set forth on Exhibit D to the Closing Certificate of Borrower) or, if the timelines set forth on Exhibit D to the Closing Certificate of Borrower contemplate Completion in phases, Borrower fails to achieve Completion of such phases in accordance with the timelines set forth on Exhibit D to the Closing Certificate of Borrower; or

   (h) Borrower fails to deliver to Agent all written certifications described in Section 3.2.3(d) by May 15, 2014; or

   (i) Provider fails to commence Provider Operations at the Facility by July 31, 2013, regardless of the occurrence of any Force Majeure Events; or

   (j) there is an attachment, execution or other judicial seizure of any material portion of Borrower’s assets or the assets of Guarantor and such seizure is not discharged within thirty (30) days; or

   (k) any order or decree is entered by any court of competent jurisdiction enjoining or prohibiting (1) Agent, Lenders, Borrower, Guarantor, or any thereof, from substantially performing any of such party’s obligations under this Agreement or any of the other Loan Documents, or (2) Provider or the Proton Equipment Vendor from substantially performing any of such party’s obligations under any Material Agreement to which they are a party, and any such order or decree is not stayed or vacated, or the proceedings out of which such order or decree arose are not dismissed, within thirty (30) days after the granting of such decree or order; or

   (l) Borrower, any Authorizing Entity or Guarantor commences or acquiesces to an Insolvency Proceeding or is subject to any Bankruptcy Action; or

   (m) all or a substantial part of the assets of Borrower, any Authorizing Entity or Guarantor are attached, seized, subject to a writ or distress warrant or are levied upon unless the same is released within sixty (60) days; or Borrower, any Authorizing Entity or Guarantor shall make an assignment for the benefit of creditors or Borrower shall not be generally paying its debts as they become or has admitted in writing to its inability to pay its debts as they become due; or

   (n) the commencement of any involuntary petition in bankruptcy against Borrower, any Authorizing Entity or Guarantor or the institution against any of the foregoing of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of any of the foregoing which shall remain undischarged or undischarged for a period of sixty (60) days; or

   (o) the dissolution, termination or merger of Borrower, any Authorizing Entity, or the death or incapacity of any Guarantor unless a substitute Guarantor has been accepted by Agent in its sole and absolute discretion within thirty (30) days thereafter; or

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(p) one or more final, unappealable judgments are entered (i) against Borrower in amounts aggregating in excess of $250,000 or (ii) against Guarantor in amounts aggregating in excess of $250,000, and said judgments are not stayed or bonded over within thirty (30) days after entry; or

(q) subject to the contest rights expressly provided to Borrower in this Agreement, if Borrower or Guarantor shall fail to pay any debt owed by it or is in default under any agreement with Agent or any other party (other than a failure or default for which Borrower’s maximum liability does not exceed $150,000 and Guarantor’s maximum liability does not exceed $250,000) and such failure or default continues after any applicable grace period specified in the instrument or agreement relating thereto; or

(r) Borrower shall be prohibited or otherwise restrained by any Governmental Authority from conducting the business theretofore conducted by it in any manner that has or could reasonably be expected to have or result in, or there shall occur any change that has or will result in, a Material Adverse Effect, or either Provider or the Proton Equipment Vendor shall be prohibited or otherwise restrained by any Governmental Authority from conducting its business or contractual obligations at or relating to the Facility; or

(s) any of the assumptions contained in any substantive non-consolidation opinion, delivered to Agent by Borrower’s Counsel in connection with the Loan or otherwise hereunder, were not true and correct as of the date of such opinion; or

(t) if any voucher or invoice is fraudulently submitted by Borrower in connection with any Advance for services performed or for materials used in or furnished for the Property; or

(u) if at any time there shall occur with respect to the Facility the imposition by any Governmental Authority or the applicable state survey agency of sanctions in the form of either a program termination (that is not lifted or stayed within 30 days after issuance), temporary management of the Facility by any Governmental Authority, or facility closure, or if for any reason the Facility, Provider or the Proton Equipment Vendor is terminated or suspended (that is not lifted or stayed within 30 days after issuance) from participation in Medicare, Medicaid or any other federal or state health care or reimbursement program; or

(v) a state or federal regulatory agency or other any Governmental Authority shall revoke any license, permit, certificate or qualification pertaining to the Facility or necessary for the continued operation of the Facility or the Proton System, regardless of whether such license, permit, certificate or qualification was held by or originally issued for the benefit of Borrower, Provider, the Proton Equipment Vendor or any other Person and Borrower fails to cause a replacement license, permit, certificate or qualification providing the same rights, privileges and benefits as the one so revoked to be issued within thirty (30) days following such revocation; or

(w) any Subject Person or any Person with an “ownership, financial or control interest” in a Subject Person (as that phrase is defined in 42 C.F.R. §420.201 et seq.) is excluded from participation in any Governmental Health Program or is convicted (as that term is defined
(x) any rescission, revocation, nullification, abrogation, termination, supersession, in full or in part, of, or any amendment or modification to, the SPE Agreement and Resolution; or

(y) any of the Ground Lease, the Ground Sublease, the Facility Lease, the Multi-Party Agreement or the O&M Agreement is, without the prior consent of Agent, modified or amended for any reason (including, without limitation, in connection with any Bankruptcy Action), or is terminated for any reason or rejected in any Bankruptcy Action; or

(z) except for delays occasioned by Force Majeure Events, if at any time there shall be a cessation in construction of the Improvements for more than five (5) consecutive Business Days or more than ten (10) Business Days in any 30-day period, unless contemplated by Exhibit D to the Closing Certificate of Borrower; or

(aa) the occurrence of any material, adverse change in the business or operations of Provider or Scripps Health, a California non-profit public benefit corporation, that could, in Agent’s reasonable judgment, cause a Material Adverse Effect;

(bb) the occurrence of (i) any “Event of Default” under and as defined in any other Loan Document or (ii) any default or failure to keep or perform any agreement, undertaking, obligation, covenant, condition, term or provision of any other Loan Document or any Material Agreement which default or failure remains uncured beyond any applicable notice or grace period contained therein; or

(cc) except for delays occasioned by Force Majeure Events, the failure of any event described on Exhibit D to the Closing Certificate of Borrower to have occurred on or before the required date for such event as shown on such Exhibit.

7.2 Remedies.

7.2.1 Rights of Agent and Lenders. Upon the occurrence and during the continuance of any Event of Default, Agent, on behalf of Lenders, shall have the right (but not the obligation), in addition to all the remedies conferred upon Agent and Lenders by law or equity or by the terms of any of the Loan Documents, to do any or all of the following, from time to time and at any time, in any order as Agent determines in its sole discretion (subject to Section 10.3), independently, singularly, concurrently or successively, together or otherwise, with or without notice to Borrower:

(a) declare the Indebtedness to be, and the Indebtedness shall thereupon become, immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Notes to the contrary notwithstanding;

(b) terminate Agent’s and Lenders’ obligations under this Agreement to extend credit of any kind or to make any Advance or disbursement, whereupon the commitment
and obligations of Agent and Lenders to extend credit or to make any Advance hereunder shall terminate;

(c) enter upon, take possession of, and use the Property and all parts thereof, and all material, equipment and supplies therein, to the extent of Borrower’s interest therein, complete the Project and do anything which in Agent’s sole judgment is necessary or desirable to fulfill, pay, settle or compromise the obligation to Borrower hereunder and continue to operate the Property;

(d) use and apply any monies, reserves and/or letters of credit deposited by Borrower with Agent or otherwise held by or for the benefit of Agent or Lenders, to cure any such default or to apply on account of any Indebtedness; and

(e) exercise or pursue any other remedy or cause of action permitted under this Agreement or any other Loan Documents, or conferred upon Agent or Lenders by operation of law or in equity.

With respect to clause (c) above, Agent and its designees, representatives, agents, licensees and contractors shall be entitled to such entry, possession and use without the consent of any party and without any legal process or other condition precedent whatsoever. Borrower acknowledges that any denial of such entry, possession and use by Agent will cause irreparable injury and damages to Agent and Lenders and Agent and Lenders shall be entitled to injunctive relief to obtain such entry.

Without limiting the generality of the foregoing, Borrower agrees that upon the occurrence and during the continuance of an Event of Default (a) Agent shall not be subject to any “one action” or “election of remedies” law or rule, and (b) all liens and other rights, remedies or privileges provided to Agent shall remain in full force and effect until Agent has exhausted all of its remedies against the Collateral and the Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Indebtedness or the Indebtedness has been paid in full. Nothing herein shall be construed as prohibiting Agent from seeking, and Agent reserves the right to seek, a deficiency judgment or preserve a deficiency claim to the extent that Agent deems the same necessary in connection with any foreclosure or similar proceeding.

7.2.2 Specific Remedies. In addition to, and without limiting any remedies of Agent and Lenders under this Agreement or applicable laws, Borrower covenants and agrees as follows:

(a) Following and during the continuance of an Event of Default, Borrower agrees to assist, and shall cause Provider to assist, and Borrower hereby unconditionally and irrevocably consents to and approves Agent in the appointment of a receiver or replacement provider or operator (and receiving any governmental approval therefor) for the Facility at Agent’s choosing in its sole discretion. If Borrower fails to comply with the provisions of this Section 7.2.2(a) for any reason whatsoever, Borrower hereby irrevocably appoints Agent and its designee as Borrower’s attorney-in-fact, with full power of substitution, for the purpose of taking such action as necessary to appoint a receiver or replacement provider or operator and obtain all governmental approvals therefor. The foregoing power of attorney is coupled with an interest
and is irrevocable and Agent and Lenders may exercise their rights thereunder in addition to any other remedies which Agent or Lenders may have against Borrower as a result of a breach of the obligations contained in this subsection.

(b) In the event of the exercise by Agent or Lenders of any remedies in respect of the Facility following the occurrence and during the continuation of an Event of Default, including, but not limited to, foreclosure and/or appointment of a receiver or replacement provider or operator, Borrower hereby agrees to cooperate, and shall cause Provider to cooperate, with Agent to permit Agent to take any such actions necessary to protect its interests as well as to permit Agent or its designee (including a receiver) to obtain, maintain or renew any one or more of the governmental approvals for the Facility (or to become the owner of the existing governmental approvals for the Facility) and to the extent permitted by Applicable Laws to obtain any other provider agreements or governmental approvals then necessary or desirable for the operation of the Facility by Agent or its designee or receiver for their current use (including, without limitation, any applications for change of ownership of the existing governmental approvals or change of control of the owner of the existing governmental approvals, or the removal and replacement of Provider). To the extent permitted by Applicable Laws, in the event of foreclosure, receivership or other enforcement action by Agent, (x) Agent is hereby authorized (without the consent of Borrower or Provider) to submit any such applications, notices, documentation or other information which Borrower caused to be delivered to Agent in accordance with the above provisions to the applicable Governmental Authorities, or to take such other steps as Agent may deem advisable to obtain, maintain, sell, limit, transfer or renew any governmental approvals in connection with the operation of the Facility for its current intended use, and Borrower agrees to cooperate and to cause Provider to cooperate with Agent in connection with the same and (y) Borrower, upon demand by Agent, shall take any action and cause Provider to take any action necessary or desirable, in Agent’s sole judgment, to permit Agent or its designee (including a receiver) to use, operate and maintain the Facility for its current use. If Borrower fails to comply with the provisions of this Section 7.2.2(b) for any reason whatsoever, Borrower hereby irrevocably appoints Agent and its designee as Borrower’s attorney-in-fact, with full power of substitution, to do any of the following during the existence of an Event of Default: Complete any Construction Project or Construction Work in progress; use unadvanced funds remaining under the Notes or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes; make changes in the applicable Construction Documents which shall be necessary or desirable to Complete each such Construction Project or such Construction Work; take over and use any and all personal property contracted for or purchased by the, if

7.2.3 Attorney in Fact. Without restricting the generality of the foregoing and for the purposes aforesaid, Borrower hereby appoints and constitutes Agent its lawful attorney-in-fact with full power of substitution in the Property to do any of the following during the existence of an Event of Default: Complete any Construction Project or Construction Work in progress; use unadvanced funds remaining under the Notes or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes; make changes in the applicable Construction Documents which shall be necessary or desirable to Complete each such Construction Project or such Construction Work; take over and use any and all personal property contracted for or purchased by the, if
appropriate, or dispose of the same as Agent sees fit; retain or employ new general contractors, subcontractors, architects, engineers and inspectors as Agent determines shall be required for said purposes; pay, settle or compromise all existing bills and claims, which may be liens or security interests, or to avoid such bills and claims becoming liens against the Property; execute all applications and certificates in the name of Borrower prosecute and defend all actions or proceedings in connection with any Construction Project or Construction Work; take action and require such performance as it deems necessary under any of the bonds to be furnished by any contractor or subcontractor in connection with any Construction Project or Construction Work and to make settlements and compromises with the surety or sureties thereunder, and in connection therewith, to execute instruments of release and satisfaction; and to do any and every act which Borrower might do in its own behalf; make any election, give any consent, commence any action or file any motion, claim, obligation, notice or application or take any other action in any Bankruptcy Action affecting any Authorizing Entity, the General Contractor, Provider or the Proton Equipment Vendor, it being understood and agreed that this power of attorney shall be a power coupled with an interest and cannot be revoked.

7.2.4 **Payments by Agent.** All sums whatsoever paid or incurred by Agent or any Lender pursuant to Section 7.2 of any kind whatsoever, shall constitute Indebtedness and shall bear interest from the date of payment or incurrence until paid at the Default Rate. To the extent that any costs so paid or incurred by Agent in accordance with the terms hereof, together with all other Advances made by Lenders hereunder in accordance with the terms hereof, exceed the Loan Amount, such excess costs shall be paid by Borrower to Agent on demand, with interest thereon at the Default Rate until paid; and Borrower shall execute such notes or amendments to the Notes as may be requested by Agent to evidence Borrower’s obligation to pay such excess costs and until such notes or amendments are so executed by Borrower, Borrower’s obligation to pay such excess costs shall be deemed to be evidenced by this Agreement. In the event Agent takes possession of the Property and assumes control of such construction as aforesaid, Agent shall not be obligated to continue such construction longer than Agent shall see fit and may thereafter, at any time, change any course of action undertaken by it or abandon such construction and decline to make further payments for the account of Borrower whether or not the Project shall have been completed.

7.2.5 **Automatic Acceleration.** Notwithstanding the foregoing, upon the occurrence of any Event of Default under Section 7.1(l) and 7.1(n), all Indebtedness shall automatically become due and payable, without any presentment, demand, protest or notice of any kind to any Borrower Party.

7.2.6 **Failure to Clear Liens.** If Borrower shall fail promptly to discharge any mechanics’ claim filed or otherwise asserted or to contest any such claim and to cause the Title Company to insure against such claim in the manner required by this Agreement, or, having commenced to contest the same, if Borrower shall thereafter fail to prosecute such contest in good faith or with due diligence, or fail to maintain such security or indemnity so required by the Title Company for its full amount, or, upon adverse conclusion of any such contest, if Borrower shall fail to cause any judgment or decree to be satisfied and lien to be released, then, and in any such event, upon giving notice to Borrower, Agent and Lenders may, but shall not be required to, (i) procure the release and discharge of any such claim and any judgment or decree thereon, without inquiring into or investigating the amount, validity or enforceability of such lien or
claim, and (ii) effect any settlement or compromise of the same or furnish the security or indemnity required by the Title Company. Any amounts so expended by Agent or Lenders, including premiums paid or security furnished in connection with the issuance of any surety company bonds, shall be paid by Borrower immediately upon Agent’s demand shall be added to the Indebtedness and shall bear interest until paid at the Default Rate.

**ARTICLE 8**

**SECURITY AGREEMENT**

8.1 **Grant of Security Agreement**. To secure payment of the Indebtedness and performance of the other Obligations, Borrower hereby grants to Agent, for the benefit of Lenders, a security interest in and to: (a) all funds of Borrower on deposit from time to time with Agent or any agent of Agent or on deposit in any depository account controlled by Agent, including, without limitation, all Deposits, and (b) all Personal Property and all replacements, substitutions and additions to such property described in this paragraph and all proceeds thereof.

8.2 **Nature of Interest**. Borrower hereby represents, warrants, covenants and agrees as follows:

(a) Borrower (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Personal Property and has rights in and the power to transfer the Personal Property, free and clear of all liens, charges or encumbrances other than liens and encumbrances in favor of Agent and liens and encumbrances, if any, expressly permitted by the Loan Documents.

(b) The Collateral is to be used by Borrower solely for business purposes.

(c) The only persons having any interest in the Personal Property are Borrower, Agent and holders of interests, if any, expressly permitted hereby.

(d) No Financing Statement, other than Financing Statements showing Agent as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby; covering any of the Personal Property or any proceeds thereof is on file in any public office except pursuant hereto.

8.3 **Financing Statements**.

(a) Borrower, at its own cost and expense, upon Agent’s demand, will furnish to Agent such further information and will execute and deliver to Agent such Financing Statements and other documents in form satisfactory to Agent and will do all such acts as Agent may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a first priority perfected security interest in the Personal Property as security for the Indebtedness.

(b) Borrower will pay the cost of filing or recording such Financing Statements or other documents, in all public offices wherever filing or recording is deemed by Agent to be desirable. Borrower hereby irrevocably authorizes Agent at any time, and from time to time, to file in any appropriate jurisdiction any initial Financing Statements and amendments.
thereto that (i) indicate that Agent holds a valid security interest in all assets of Borrower (or words of similar effect), regardless of whether any particular asset comprised in the Personal Property falls within the scope of Article 9 of the Code, or as being of an equal or lesser scope or within greater detail, and (ii) contain any other information required by the Code, and in the case of a Financing Statement filed as a fixture filing or indicating Collateral as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Borrower agrees to furnish any such information to Agent promptly upon request. Borrower further ratifies and affirms its authorization for any Financing Statements and/or amendments thereto, executed and filed by Agent in any jurisdiction prior to the date of this Agreement.

8.4 Remedies.

(a) Upon the occurrence and during the continuation of an Event of Default, in addition to all the remedies available in this Agreement, the other Loan Documents, at law or in equity, Agent and Lenders shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Personal Property, or any part thereof, and for that purpose, so far as Borrower can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Personal Property or any part thereof may be situated and remove the same in compliance with the applicable requirements of the Code; and Agent shall be entitled to hold, maintain, preserve and prepare the Personal Property for sale, until disposed of, or may propose to retain the Personal Property subject to Borrower’s right of redemption, if any, as provided in the Code. Agent may render the Personal Property unusable without removal and may dispose of the Personal Property on the Property. Agent may require Borrower to assemble the Personal Property and make it available to Agent for its possession at a place to be designated by Agent which is reasonably convenient to both parties. Agent will give Borrower at least ten (10) days’ notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to Borrower’s Address at least ten (10) days before the time of the sale or disposition. Agent or Lenders may buy any or all of the Personal Property at any public sale. Agent or Lenders may buy any or all of the Personal Property at private sale if the Personal Property is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Land, the Improvements and any other Collateral. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys’ fees and legal expenses incurred by Agent and Lenders, shall be applied against the Indebtedness in such order or manner as Agent shall select. Agent will account to Borrower for any surplus realized on such disposition after the Indebtedness has been fully and finally satisfied in accordance with the applicable requirements of the Code.

(b) BY ITS EXECUTION HEREOF, TO THE EXTENT ALLOWED BY LAW, BORROWER EXPRESSLY WAIVES AND RELINQUISHES ANY RIGHT IT MAY HAVE TO REQUIRE AGENT OR LENDERS TO EXERCISE THEIR REMEDIES WITH RESPECT TO THE ITEMS DESCRIBED IN THIS ARTICLE 8 IN ANY MANNER OTHER THAN AS PROVIDED TO AGENT AND LENDERS IN SECTION 8.4(a) HEREINABOVE.
8.5 General Security Agreement Provisions.

(a) The terms and provisions contained in this Article 8, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

(b) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Borrower or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of the Leases, together with all of the right, title and interest of Borrower, as lessor thereunder.

(c) Borrower agrees that:

(i) Where Collateral is in possession of a third party, Borrower will join with Agent in notifying the third party of Agent’s interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Agent;

(ii) Borrower will cooperate with Agent and Lenders in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(iii) Until all of the Obligations are paid and performed in full, Borrower will not suffer, cause or permit any change in Borrower’s legal status without Agent’s prior written consent.

ARTICLE 9
GENERAL PROVISIONS

9.1 Costs and Expenses. Borrower unconditionally agrees to pay all Charges within three (3) Business Days following written demand. In case of any Default, Borrower shall pay or cause to be paid all of Agent’s and Lenders’ costs and expenses, including attorneys’ fees in connection with the administration or enforcement of the Loan Documents, including, without limitation, those costs and expenses relating to:

(a) the foreclosure of the Lien of the Mortgage or the exercise of the power of sale contained therein; (b) any sale pursuant the Code and/or the Bankruptcy Code (including, without limitation, a sale pursuant to Section 363 of the Bankruptcy Code); (c) any Insolvency Proceeding or Bankruptcy Action affecting any Borrower Party, Provider or the Proton Equipment Vendor; or (d) Agent’s or Lenders’ attempts to remedy or cure any such Default. In addition to, and without limiting the generality of, the foregoing, if at any time hereafter prior to repayment of the Indebtedness in full and all Obligations satisfied in full, Agent employs counsel, consultants or appraisers for advice or other representation, whether or not any suit has been or shall be filed and whether or not other legal proceedings have been or shall be instituted, with respect to the Property or the marketing thereof or any of the Loan Documents, in connection with any consent, approval or amendment or to protect, collect, lease, sell, take possession of, or liquidate any of the Collateral, or to attempt to enforce any...
security interest or lien in any of the Collateral, or to enforce any rights of Agent or Lenders or any of Borrower’s obligations hereunder or those of any other person, firm or corporation which may be obligated to Agent or Lenders by virtue of this Agreement or any of the other Loan Documents heretofore or hereafter delivered to Agent by or for the benefit of Borrower to defend any litigation initiated by a third-party to which Agent or Lenders become a party, or in connection with any Insolvency Proceeding or Bankruptcy Action, then, in any such event, all of the reasonable fees and expenses arising from such services, and all expenses, costs and charges relating thereto, shall constitute additional Indebtedness, payable on demand and shall bear interest at the Default Rate. Agent and Lenders may make Advances at any time to reimburse Agent and Lenders for the foregoing costs and expenses. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, all legal fees and disbursements of Agent and Lenders, whether for outside firms, or for in-house counsel.

9.2 Effect of Inspections and Investigations. The authority herein conferred upon Agent, and any action taken by Agent, to inspect the Property, will be exercised and taken by Agent for its and Lenders’ own protection only and shall not be relied upon by any Borrower Party or any other Person for any purpose whatsoever and any action taken by Agent or Agent’s consultant (whether an environmental consultant, engineer, architect, or otherwise) to review any reports or to assess any matters in connection with the Property will be exercised and taken by Agent and by Agent’s consultant for their and Lenders own protection only and shall not be relied upon by any Borrower Party or any other Person for any purpose whatsoever; and neither Agent nor Agent’s consultant shall be deemed to have assumed any responsibility to any Borrower Party with respect to any such action herein authorized or taken by Agent, or Agent’s consultant or with respect to the Property, or prevention of mechanic’s and other liens from being claimed or asserted against the Property or review and assessment of environmental or any other matters. Any review, investigation or inspection conducted by Agent, any environmental, architectural, engineering or other consultants retained by Agent or any agent or representative of Agent or any Lender in order to verify independently Borrower’s satisfaction of any conditions precedent to Advances, Borrower’s performance of any of the covenants, agreements and obligations of Borrower or any other Borrower Party under the Loan Documents, or the validity of any representations and warranties made hereunder (regardless of whether or not the party conducting such review, investigation or inspection should have discovered that any of such conditions precedent were not satisfied or that any such covenants, agreements or obligations were not performed or that any such representations or warranties were not true), shall neither affect nor constitute a waiver by Agent or Lenders of (i) any representations and warranties under this Agreement or any of the other Loan Documents or Agent’s or Lenders’ reliance thereon or (ii) Agent’s or Lenders’ reliance upon any certifications of Borrower required under this Agreement or any of the other Loan Documents or any other facts, information or reports furnished Agent hereunder or thereunder or otherwise in connection with the Loan. Neither Agent nor Lenders undertakes or assumes any responsibility or duty to any Borrower Party or any other party to select, review, inspect, examine, supervise, pass judgment upon or inform any Borrower Party or any third party of (a) the existence, quality, adequacy or suitability of appraisals of the Property or any other Collateral, (b) any environmental report, or (c) any other matters or items, including, but not limited to, engineering, soils and seismic reports which are contemplated in the Loan Documents. Any such selection, review, inspection, examination and the like, and any other due diligence conducted by Agent or Lenders is solely for the purpose of

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9.3 **Acquiescence not to Constitute Waiver of Requirements.** Each and every covenant and condition for the benefit of Agent and Lenders contained in this Agreement or any of the other Loan Documents may be waived by Agent, **provided, however,** that, to the extent that Agent may have acquiesced in any noncompliance with any conditions precedent to the Initial Disbursement or any Advance, such acquiescence shall not be deemed to constitute a waiver by Agent or Lenders of any such conditions precedent with respect to any future disbursements of Loan proceeds.

9.4 **Protective Advances.** Agent and Lenders shall have the right, but not the obligation, to do any and all acts which Agent may deem reasonably necessary to assure the protection of the Collateral and the lien or charge of the Loan Documents, including, but not limited to, during the continuance of an Event of Default and in addition to the rights under Article 7 and Article 8 hereof and any remedies set forth in the other Loan Documents, the settlement, compromise or contest of any Lien or claim of Lien, the taking of possession of the Property and Completion of all Construction Work and the commencement of, appearance in, or defense of any action or proceeding purporting to affect the rights, obligations or duties of the parties hereto. Any expense paid or incurred (including attorneys’ fees and court costs), or any advance made by Agent or Lenders in such connection, shall be paid by Borrower to Agent upon demand. Such amounts as are advanced or expended by Agent or Lenders hereunder and any other amounts advanced by Agent or Lenders pursuant to this Agreement or any other the other Loan Documents shall constitute Indebtedness and shall bear interest from the date of advance or expenditure until repayment at the Default Rate.

9.5 **Increased Costs.** Borrower shall pay directly to a Lender such amounts as are necessary to compensate such Lender for Additional Costs resulting from any change after the date hereof in any applicable law or by any domestic or foreign court, which (i) subjects such Lender to any tax, duty or other charge with respect to the Loan or its Note, or changes the basis of taxation of any amounts payable to such Lender under the Loan or its Note (other than taxes imposed on the overall net income of such Lender), (ii) imposes, modifies or deems applicable any reserve, special deposit or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, such Lender, (iii) imposes on such Lender any other condition affecting the Loan or its Note, or any of such extensions of credit or liabilities or (iv) imposes any capital adequacy requirements on such Lender by virtue of the Loan or the Notes. Such Lender will notify Borrower (with a copy to Agent) of any event occurring after the date hereof which would entitle it to compensation pursuant to this paragraph as promptly as practicable after it obtains knowledge thereof and determines to request such compensation, and will use reasonable efforts to mitigate such Additional Costs, **provided, however,** that, in order for any such notice to be effective to impose on Borrower the obligation to pay any such amount, such notice must be delivered by Lender in question within ninety (90) days after such Lender should reasonably have been aware of the event giving rise to its entitlement to compensation. Any amount payable by Borrower under this Section 9.5 shall be paid within five (5) days of receipt by Borrower of a notice by a Lender setting forth the amount due and the basis for the determination of such amount, which statement shall be conclusive and
9.6 **Tax Liability.** If, by reason of a change in any applicable tax, banking or lending laws or regulations occurring after the date hereof, (a) Borrower is required to make any deduction or withholding in respect of any taxes, duties or other charges from any payment due under the Loan Documents, (b) Agent or Lenders are charged with responsibility for the payment of all or any part of the Impositions or (c) the method of collecting Impositions is changed so as to affect Agent’s or Lenders’ rights under this Agreement or any other Loan Document, or the liens and security interests granted under the Loan Documents, then upon Agent’s demand Borrower shall pay to Agent the amount determined by Agent as necessary to fully compensate Agent and Lenders for all losses that Agent or Lenders may suffer as a result of such change; provided that if Agent determines that it may be unlawful to charge Borrower for such losses then Agent shall have the right to declare all Indebtedness to be fully due and payable not earlier than sixty (60) days from the date of such declaration.

9.7 **Document and Recording Tax Indemnification.** Borrower agrees to indemnify, defend and hold harmless Agent and Lenders from and against any claim that any documentary stamp or mortgage tax is due and payable in connection with the Loan or the execution, delivery or recording of the Loan Documents and to pay such taxes and expenses incurred by Agent or Lenders in connection therewith. Borrower may contest any determination that any such taxes are due, but shall pay any such taxes (including penalties and interest) when legally required. The indemnity obligations contained in this Section shall survive repayment of the Loan.
9.8 Assignments and Participations.

(a) Any Non-Delinquent Lender may, with the prior written consent of Agent, which shall not be unreasonably withheld or delayed, at any time or times and without Borrower’s consent, grant any Participation in its Pro Rata Share of the Loan to one or more Persons not an Affiliate of Borrower or Guarantor (each a “Participant”). In the event of any such grant by a Lender of a Participation to a Participant, such Lender shall remain responsible for the performance of its obligations hereunder, and Agent shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations hereunder, and Agent shall have no obligation to communicate with, give any notice to, make any payment to or take any direction from, any Participant. Each Lender agrees for the benefit of Borrower that any agreement pursuant to which any Lender may grant a Participation shall provide that such Lender shall retain the sole right and responsibility to enforce the obligations of Borrower hereunder and under any other Loan Document, including, without limitation, the right to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; provided, however, that such participation agreement may provide that such Lender will not agree to any modification, amendment or waiver described in clauses (i) through (vii) of Section 9.16 without the consent of the Participant.

(b) Upon request by Borrower, each Lender agrees to provide Borrower with notice of all Participations sold by such Lender, which shall acknowledge and represent compliance with the above terms of this Section 9.8. Borrower agrees to provide all assistance reasonably requested by a Lender to enable such Lender to sell Participations as aforesaid, or make assignments of its interest in the Loan as hereinafter provided in this Section.

(c) Any Non-Delinquent Lender may, with the prior written consent of Agent, which shall not be unreasonably withheld or delayed, at any time or times and without Borrower’s consent, make a Loan Transfer to an Eligible Lender not an Affiliate of Borrower or Guarantor (such assignee, an “Assignee”) subject to the following conditions: (i) the aggregate amount of the Individual Loan Commitment of the assigning Lender being assigned pursuant to each such assignment (determined as of the date of the Assignment and Acceptance Agreement with respect to such assignment) shall not cause or otherwise result in said assigning Lender’s remaining unassigned Individual Loan Commitment to be less than $5,000,000; (ii) the Assignee shall execute and deliver to Agent, for its approval, acceptance and recording in a register maintained by Agent, an Assignment and Acceptance Agreement, together with a processing and recordation fee of $5,000 for Agent’s own account; (iii) the principal amount of any assigned Individual Loan Commitment shall be not less than $5,000,000; (iv) each such Loan Transfer shall be to an Eligible Lender; and (v) the Assignee and/or the assigning Lender shall pay to Agent all of Agent’s reasonable costs and expenses incurred in connection with such Loan Transfer. Upon such execution, delivery, approval, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance Agreement, (1) Assignee thereunder shall be a party to this Agreement and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance Agreement, have the rights and obligations of a Lender hereunder and (2) the assigning Lender thereunder shall to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance Agreement, relinquish its rights and be released from its obligations under this Agreement arising from and after the date of such Assignment and Acceptance Agreement.
Notwithstanding anything contained in this Agreement to the contrary, ORIX Capital Markets, LLC, a Delaware limited liability company, as Lender and not Agent ("ORIX"), shall have the right, at its sole option, to cause Varian Medical Systems International AG, a Swiss corporation, and its successors, assigns and participants in its capacity as Lender ("Varian"), to make a Loan Transfer to ORIX (or its assignee or designee), at any time and from time to time, of all or any portion of Varian’s Individual Loan Commitment (whether funded or not). In the event ORIX elects to exercise its right to cause Varian to make a Loan Transfer to ORIX (or its assignee or designee), ORIX shall deliver written notice to Varian (with a copy to Agent) setting forth the amount of Varian’s Individual Loan Commitment that ORIX (or its assignee or designee) desires to purchase (a “Transfer Notice”), and in such event, Varian, as the assigning Lender, shall sell to ORIX (or its assignee or designee), as Assignee, that portion of Varian’s Individual Loan Commitment set forth in such Transfer Notice. The purchase price to be paid by ORIX (or its assignee or designee) to Varian for any such Loan Transfer shall be no less than that portion of the then outstanding principal amount of Varian’s Individual Loan Commitment set forth in the Transfer Notice and all interest accrued thereon prior to the date of the completion of the Loan Transfer, and shall exclude all fees (including, without limitation, the Exit Fee, the Amortization Conversion Fee and the Minimum Lookback Amount), costs, charges and other amounts payable after the completion of the Loan Transfer, as further described in the Assignment and Acceptance Agreement, which ORIX (or its assignee or designee) and Varian agree to execute within fifteen (15) Business Days of Varian’s receipt of ORIX’s written election notice. No later than one (1) Business Day after ORIX (or its assignee or designee) receives an originally executed counterpart of such Assignment and Acceptance Agreement, ORIX (or its assignee or designee) shall pay to Varian (in immediately available U.S. funds) the purchase price and such other sums as set forth in such Assignment and Acceptance Agreement. In addition to the foregoing, upon any exercise by ORIX of its rights contained in this paragraph, ORIX and Varian agree to comply with and perform all of the applicable covenants and agreements set forth in this Section 9.8. If Varian fails to execute the Assignment and Acceptance Agreement as set forth above, ORIX may exercise any remedies which ORIX may have as a result of a breach of the obligations contained in this paragraph. Varian and ORIX shall reasonably cooperate with each other, and shall do all things reasonably necessary or desirable, to affect the intent of this paragraph.

(d) By executing and delivering an Assignment and Acceptance Agreement, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance Agreement, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto or the attachment, perfection or priority of any Lien granted by Borrower to Agent or any Lender in the Collateral; (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or Guarantor or the performance or observance by Borrower or Guarantor of any of their obligations under this Agreement or any other Loan Document furnished pursuant hereto; (iii) such Assignee confirms that it has received a copy of all Loan Documents and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance Agreement; (iv) such Assignee will,
independently and without reliance upon the Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such Assignee appoints and authorizes Agent to take such action as agent on its behalf and to exercise such powers under this Agreement as are delegated to Agent by the terms hereof, together with such powers, including the discretionary rights and incidental power, as are reasonably incidental thereto; and (vi) such Assignee agrees that it will be bound by and will perform in accordance with their terms all of the obligations which by the terms of this Agreement and the other Loan Documents are required to be performed by it as a Lender.

(e) Upon its receipt of an Assignment and Acceptance Agreement executed by an assigning Lender and Assignee, Agent shall, if such Assignment and Acceptance Agreement has been properly completed and is in substantially the form of Exhibit F attached hereto, accept such Assignment and Acceptance Agreement and give prompt notice thereof to Borrower. Until such time as Agent shall have accepted any such Assignment and Acceptance Agreement, Agent shall have no obligation to communicate with or accept or take into account any communication from any Assignee and Agent shall continue to deal solely and directly with any such assigning Lender in connection with the Loan, this Agreement and the other Loan Documents.

(f) In connection with the execution and delivery of each Assignment and Acceptance Agreement as provided for in this Section 9.8, the assigning Lender shall deliver to Agent the superseded Note or Notes and Agent shall deliver to Borrower for execution by Borrower, substitute notes, in the form of Exhibit E, in order to reflect the appropriate Individual Loan Commitment of the assigning Lender and Assignee after giving effect to such Assignment and Acceptance Agreement. Borrower hereby covenants and agrees to promptly execute said new Notes and to promptly return them to Agent so that Agent may deliver said new Notes to the appropriate Lenders; provided, however, Agent shall not deliver said new Notes unless and until the assigning Lender shall have delivered the superseded Note to Agent. The assigning Lender hereby appoints Agent as its attorney-in-fact (coupled with an interest) for the sole purpose of canceling the superseded Note and the assigning Lender hereby covenants and agrees that Agent shall not be liable for any action taken or omitted to be taken by Agent in connection therewith, unless caused by Agent’s own gross negligence or willful misconduct. Upon Borrower’s request, Agent shall stamp each superseded Note “SUPERSEDED” and shall attach each said superseded Note to, and each said superseded Note shall become a part of, the new Notes and Agent shall deliver said new Notes to the appropriate Lenders. All such new Notes shall constitute “Notes” and the obligations evidenced by such substitute notes shall constitute obligations secured by the Mortgage. In connection with Borrower’s execution of any such new Notes, Borrower shall deliver to Agent such evidence of the due authorization, execution and delivery of the substitute notes and any related documents as Agent and/or Assignee may reasonably request. Assignee shall, prior to the first date on which interest or fees are payable hereunder for its account, deliver to Borrower and Agent certification as to exemption from deduction, backup withholding and withholding of any United States federal income taxes in accordance with Section 10.13 and otherwise furnish to Borrower and Agent such forms, certifications, statements and other documents as either of them may reasonably request from time to time to evidence that such Assignee is entitled to receive any payments to be made to it hereunder without the withholding of any tax or increased liability for any Additional Costs.
(g) Borrower, Agent and Lenders shall execute such modifications to the Loan Documents as shall, in the reasonable judgment of Agent, be necessary or desirable in connection with assignments in accordance with the foregoing provisions of this Section.

(h) Borrower recognizes that in connection with a Lender’s selling of Participations or making of assignments, any or all documentation, financial statements, appraisals and other data, or copies thereof, relevant to Borrower, Guarantor or the Loan may be exhibited to and retained by any such Participant or Assignee or prospective Participant or Assignee. A Lender’s delivery of any financial statements and appraisals to any such Participant or Assignee or prospective Participant or Assignee shall be done on a confidential basis.

9.9 **Cooperation.** Borrower shall, and shall cause each of the other Borrower Parties to, fully cooperate with Agent and Lenders in connection with servicing the Loan, any Loan Transfer, Participation or any other financing created or obtained in connection with the Loan and, if Agent elects at any time, in connection with the creation of tranches of the Loan or splitting the Loan into separate Loans (in the aggregate amount of the Loan Amount) having different priorities, including signing new notes and amendments to this Agreement and the other Loan Documents evidencing such tranches or splitting of the Loan, provided that the Loan Amount, the Interest Rate, timing of payments by Borrower and other economic terms of the Loan shall not, taken as a whole, be changed as a result thereof. Without limiting the generality of the foregoing, Borrower shall, upon request, (a) provide additional information regarding the Project, Borrower, Guarantor, and any Affiliates of the foregoing (including, without limitation, additional appraisals, environmental reports, engineering reports and similar due diligence materials and updates), (b) supply such documentation, financial statements, and reports that may be required to comply with applicable securities and other laws and regulations, (c) make modifications to any of the Loan Documents and/or the Organizational Documents, (d) make revisions to existing legal opinions and deliver updated or additional legal opinions, (e) deliver updated and additional tenant estoppel certificates, subordination agreements and similar agreements, and (f) deliver updated certificates necessary or appropriate to effect such transaction, provided that no such modification, revision, additional documents or other action in connection with such cooperation shall materially increase the obligations or materially decrease the rights of Borrower under the Loan Documents. The costs of such cooperation, and providing such additional opinions, documents, revisions, modifications and actions, shall be borne by Borrower. At Agent’s request, Borrower Parties shall make such representations and warranties as of the date of any Loan Transfer or Participation as are customary in such transactions, and shall review and confirm any factual information or disclosures with respect to the Project, Borrower Parties and their respective Affiliates contained in any private placement memorandum, prospectus, registration statement or other offering materials relating to any Loan Transfer or Participation.

9.10 **Disclosure of Information.**

(a) Agent and Lenders shall have the right to make available to any party for the purpose of any Loan Transfer, Participation or any other financing created or obtained in connection with the Loan (including any prospective purchaser, any Rating Agency, any Governmental Authority and any prospective bidder at any foreclosure sale of the Property) any and all information that Agent or Lenders may have with respect to the Property, the Facility.
Lease, any Borrower Party, or any other document or agreement in connection with the transaction represented by the Loan Documents, whether provided by Borrower, Guarantor or any third party or obtained as a result of any audits, environmental or other assessments, or otherwise. Borrower and Guarantor agree that neither Agent nor Lenders shall have any liability whatsoever as a result of delivering any such information to any third party, and Borrower and Guarantor, on behalf of itself and its successors and assigns, hereby releases and discharges Agent and Lenders from any and all liability, claims, damages, or causes of action, arising out of, connected with or incidental to the delivery of any such information to any third party. Borrower and Guarantor each irrevocably waives any and all rights it may have under applicable state or federal law to prohibit disclosure, including but not limited to any right of privacy. Further Borrower and Guarantor acknowledge that such information may be transmitted via the internet or by email.

(b) Without limiting Section 9.10(a), all news releases, publicity or advertising by Borrower, Guarantor, or their Affiliates, through any media intended to reach the general public which refers to the Loan Documents or the financing evidenced by the Loan Documents, or to Borrower, Agent or Lenders, shall be subject to the prior written approval of Agent, such approval of Agent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, Borrower, Guarantor, and their Affiliates shall use commercially reasonable efforts to keep all information obtained in connection with the transaction described in this Agreement, confidential, except that any such party, as applicable, may disclose any such information (i) to its auditors, attorneys and other consultants in connection with the transaction described in this Agreement (each such recipient being informed of the confidential nature of such information and directed to keep the same confidential), (ii) to the extent required by any Applicable Law, and (iii) if such information is otherwise available to the public not through a breach hereof.

9.11 Notices. All Notices shall be in writing and shall be (a) delivered in person, in which event the Notice shall be deemed received when delivery (or refusal of receipt) is actually made, (b) sent by facsimile, in which event the Notice shall be deemed received on the date of transmission if transmission is confirmed before 4:00 p.m. Dallas time on a Business Day or if transmission is confirmed after 4:00 p.m. Dallas time, then on the next Business Day provided that the sender obtains electronic confirmation of receipt and that a copy of such Notice is delivered pursuant to clause (a) or (c); or (c) sent by a nationally recognized overnight courier for next Business Day delivery, in which event the Notice shall be deemed received on the first Business Day after delivery to, and acceptance for delivery by, the courier. All such Notices shall be addressed to the party for whom the Notice is intended, with a copy to its attorney, at their respective Addresses indicated in Section 1.1 of this Agreement and if sent by facsimile such Notices shall be sent to the facsimile number set forth in Section 1.1. Either party may change its Address or facsimile number by giving written notice to the other in accordance with the foregoing notice provision.

9.12 No Waiver; Rights and Remedies Cumulative. No action by Agent or Lenders, including, without limitation, any course of conduct, course of dealings, statements or actions, and no failure by Agent or Lenders to (1) insist upon strict performance of any term, condition, covenant or agreement contained in any of the Loan Documents, (2) exercise, or delay by Agent or Lenders in exercising, any right, remedy, power or privilege under any of the Loan Documents, shall in any event operate as a waiver thereof, nor shall any single or partial exercise
of any right, remedy, power or privilege under any of the Loan Documents preclude any other or further exercise thereof, or the exercise of any other right, remedy, power or privilege. In particular, and not by way of limitation, by accepting payment after the due date of any amount payable under this Agreement, any Note or any other Loan Document, Agent shall not be deemed to have waived any right either to require prompt payment when due of all other amounts due under this Agreement, the Notes or the other Loan Documents, or to declare a default for failure to effect prompt payment of any such other amount. Moreover, a waiver of one Default or Event of Default with respect to any Borrower Party shall not be construed to be a waiver of any subsequent Default or Event of Default with respect to such Borrower Party or any other Borrower Party or to impair any remedy, right or power consequent thereon. Upon the occurrence of an Event of Default, Agent shall have no obligation to accept any tender of any cure, or attempt to cure, by or on behalf of Borrower unless and until Agent receives written instructions from the Required Lenders, and Agent’s acceptance of any cure of an Event of Default shall not be deemed to be a waiver of Agent’s right to refuse acceptance of any future tender of any cure of, or attempt to cure, an Event of Default. The rights and remedies provided in this Agreement and the other Loan Documents are cumulative and not exclusive of any right or remedy provided by law. No notice to or demand on Borrower in any case shall, in itself, entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Agent or Lenders to any other or further action in any circumstances without notice or demand.

9.13 **Inurement**. This Agreement and the Loan Documents shall be binding upon and inure to the benefit of the respective parties hereto and their respective successors and assigns, provided that no assignment by Borrower shall be effective, except as provided herein.

9.14 **Form of Documents**. All documents and other matters required by any of the provisions of this Agreement to be submitted or furnished to Agent shall be in form and substance satisfactory to Agent.

9.15 **Time is of the Essence**. Time is hereby declared to be of the essence of this Agreement, the other Loan Documents and of every part, term and provision hereof and thereof, and each and every obligation hereunder and thereunder.

9.16 **Entire Agreement; Amendments**. This Agreement and the other Loan Documents constitute the entire agreement between the parties hereto, and no modification, waiver, amendment, discharge or change of this Agreement or any other Loan Document nor any provision hereof or thereof shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is sought (it being understood, however, that the signature of Agent, shall be sufficient to bind Lenders to any such modification, waiver, amendment, discharge or change); provided, however, that the foregoing shall not limit or otherwise affect a provision hereof or any other Loan Document pursuant to which Agent is authorized to consent to or approve of any matter without the need for any Lender approval; provided, further, that no amendment, waiver or consent shall, unless in writing and signed by all Lenders (subject, however, to the provisions of Section 10.16(d)), do any of the following: (i) reduce the principal of, or interest on, the Notes or any fees due hereunder or any other amount due hereunder or under any other Loan Document; (ii) postpone any date fixed for any payment of principal of, or interest on, the Notes or any fees due
hereunder or under any other Loan Document; (iii) release any material portion of the Collateral or other collateral for the Loan; (iv) amend this Section 9.16 or Sections 9.8, 10.1 or 10.3; (v) release, in whole or in part, Guarantor; (vi) increase the Loan Amount; (vii) change the definition of “Required Lenders”; or (viii) change the amount of the Individual Loan Commitment of any Lender (it being understood that no amendment, modification, termination, waiver or consent with respect to any condition precedent, covenant, mandatory prepayment or Default shall constitute a change in the Individual Loan Commitment of any Lender) (the foregoing items (i) through (viii) are collectively known as “Major Decisions”). This Agreement supersedes any other agreement, oral or written, made by Lenders with or for the benefit of Borrower.

All communications from Agent to Lenders requesting Lenders’ determination, consent, approval or disapproval (1) shall be given in the form of a written notice to each Lender, (2) shall be accompanied by or include a description or copy of the matter or thing as to which such determination, approval, consent or disapproval is requested and (3) shall include Agent’s recommended course of action or determination in respect thereof. Each Lender shall reply promptly, but in any event within seven (7) Business Days (or three (3) Business Days with respect to any decision to accelerate or stop acceleration of the Loan) after receipt of the request therefor by Agent (the “Lender Reply Period”). Unless a Lender shall give written notice to Agent that it approves the recommendation or determination of Agent within the Lender Reply Period, such Lender shall be deemed to have disapproved such recommendation or determination.

If all Lenders are unable to reach an agreement with respect to a Major Decision within ten (10) Business Days after the expiration of the Lender Reply Period, then Agent shall thereafter have the right to take such steps as are necessary (including the right to declare a default or commence an enforcement action or proceeding) to preserve and protect the Collateral until such time as all Lenders have reached agreement with respect to any Major Decisions. Agent may consult with legal counsel and other experts and advisors selected by it and Agent shall not be liable for actions taken or omitted to be taken so long as such action or omission does not violate another provision of this Agreement and such action taken or omitted to be taken does not constitute willful misconduct or gross negligence.

9.17 Governing Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE DEEMED TO BE CONTRACTS ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS), INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, AND TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS, AND THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO § 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW; PROVIDED, HOWEVER, THAT THE LAWS OF THE STATE

9.18 Captions. The captions and headings of various Articles and Sections of this Agreement and Exhibits pertaining hereto are for convenience only and are not to be considered as defining or limiting in any way the scope or intent of the provisions hereof. References to any Section or Sections shall be deemed to refer to Sections of this Agreement unless otherwise indicated.

9.19 Counterparts. This Agreement and each of the other Loan Documents may be signed in multiple counterparts, each of which constitute an original and, taken together, shall constitute a single agreement.

9.20 Detached Signatures. Borrower certifies that Borrower’s Counsel has been delegated the power to authorize Agent, or Lenders’ Counsel, to attach signature pages of Borrower, Guarantor and if applicable any Affiliate of Borrower, to the final, compiled versions of each of the Loan Documents. Borrower further agrees that should any dispute arise as to which version of the Loan Documents is the “final” version, the computer files maintained by Lenders’ Counsel, including without limitation any records of e-mail communications, shall be conclusive except in the case of manifest error.

9.21 Partial Invalidity; Severability. If any of the provisions of this Agreement or the other Loan Documents, or the application thereof to any Person, party or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the other Loan Documents, or the application of such provision or provisions to Persons, parties or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law and to this end, the provisions of this Agreement and all the other Loan Documents are declared to be severable. All covenants and agreements of Borrower and Guarantor shall be joint and several.

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9.22 **Definitions Include Amendments.** Definitions contained in this Agreement and Schedule 1.2 which identify documents, including, but not limited to, the Loan Documents, shall be deemed to include all amendments and supplements to such documents from the date hereof, and all future amendments, modifications, and supplements thereto entered into from time to time to satisfy the requirements of this Agreement or otherwise with the consent of Agent. Reference to this Agreement contained in any of the foregoing documents shall be deemed to include all amendments and supplements to this Agreement.

9.23 **Waiver of Damages.** In no event shall Agent or any Lender be liable to any Borrower Party for punitive, exemplary or consequential damages, including, without limitation, lost profits, whatever the nature of a breach by Agent or any Lender of its obligations under this Agreement or any of the Loan Documents, and Borrower hereby unconditionally and irrevocably waives each and all claims for punitive, exemplary or consequential damages.

9.24 **Claims Against Agent or Lenders.** Neither Agent nor any Lender shall be in default under this Agreement, or under any other Loan Documents, unless a written notice specifically setting forth the claim of Borrower shall have been given to Agent within thirty (30) days after Borrower first had Knowledge of the occurrence of the event which Borrower alleges gave rise to such claim and Agent or Lenders do not remedy or cure the default, if any there be, promptly thereafter. No Lender shall be liable for any act or omission of any other Lender or for any default on the part of any other Lender.

9.25 **Offsets, Counterclaims and Defenses.** Borrower hereby unconditionally and irrevocably waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Agent or any Lender or their agents or otherwise offset any obligations to make payments required under the Loan Documents. Any assignee of any Lender’s interest in and to the Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses which Borrower may otherwise have against any assignor of such documents, and no such offset, counterclaim or defense shall be interposed or asserted by Borrower in any action or proceeding brought by any such assignee upon such documents, and any such right to interpose or assert any such offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Borrower.

9.26 **Set-Offs.** In addition to (and without limitation of) any right of setoff, bankers’ lien or counterclaim Agent or any Lender may otherwise have, Agent and each Lender shall be entitled, but only with the prior consent of Agent, to offset balances (general or special, time or demand, provisional or final) held by it for the account of Borrower at any of Agent’s or such Lender’s offices against any amount payable by Borrower to Agent or such Lender hereunder or under any other Loan Document which is not paid when due (regardless of whether such balances are then due to Borrower), in which case it shall promptly notify Borrower and (in the case of a Lender) Agent thereof; provided, however, that Agent’s or such Lender’s failure to give such notice shall not affect the validity thereof.

9.27 **Relationship.**

(a) The relationship between Lenders and Borrower shall be that of creditor-debtor only. No term in this Agreement or in the other Loan Documents and no course of dealing
between the parties shall be deemed to create any relationship of agency, partnership or joint venture or any fiduciary duty by Agent or Lenders to Borrower or any other party.

(b) Lenders agree and accept that Varian and Proton Equipment Vendor are and will be treated at all times under the Loan Documents as separate legal entities. No default by Proton Equipment Vendor of its obligations under the Proton Equipment Vendor Documents shall entitle Agent or any Lender to exercise any remedy or offset right against Varian or will in any way affect the rights of Varian as a Lender under the Loan Documents.

9.28 **Agents.** In exercising any rights under the Loan Documents or taking any actions provided for therein, Agent may act through its employees, agents or independent contractors as authorized by Agent.

9.29 **Waiver of Marshaling of Assets.** To the fullest extent Borrower may legally do so, Borrower waives all rights to a marshaling of the assets of Borrower, Guarantor, its members, if any, and others with interests in Borrower and of the Collateral, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any laws pertaining to the marshaling of assets, the sale in inverse order of alienation, homestead exemption, the administration of estates of decedents, or any other matters whatsoever to defeat, reduce or affect the right of Agent or Lenders under the Loan Documents to a sale of any of the Collateral for the collection of the related debt without any prior or different resort for collection, or the right of Agent or Lenders to the payment of the related debt out of the net proceeds of the Collateral in preference to every other claimant whatsoever. In addition, Borrower, for itself and its successors and assigns, waives in the event of foreclosure of the Mortgage, any equitable right otherwise available to Borrower which would require the separate sale of portions of the Property.

9.30 **Conflict.** In the event of any conflict between the provisions of this Agreement and any of the other Loan Documents, the provisions of this Agreement shall control.

9.31 **Brokers and Financial Advisors.** Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the transaction contemplated by this Agreement other than Broker. Borrower hereby indemnifies Agent and Lenders and holds Agent and Lenders harmless from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from a claim by a financial advisors, brokers, placement agents or finders that such Person acted on behalf of Borrower in connection with the transaction contemplated herein. The provisions of this Section 9.31 shall survive the expiration and termination of this Agreement and the repayment of the Indebtedness.

9.32 **No Third Party Beneficiaries.** This Agreement and the other Loan Documents are solely for the benefit of Agent, Lenders and Borrower, and nothing contained in this Agreement or the other Loan Documents shall be deemed to confer upon anyone other than Agent, Lenders and Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained herein or therein. All conditions to the obligations of Lenders to make the Loan hereunder are imposed solely and exclusively for the benefit of Agent, Lenders and Borrower, and no other person or entity shall have standing to require
satisfaction of such conditions in accordance with their terms or be entitled to assume that Lenders will refuse to make the Loan in the absence of strict compliance with any or all thereof and no other person shall under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Agent, in Agent’s sole discretion. Agent deems it advisable or desirable to do so.

9.33 No Obligation to Extend or Refinance. Borrower expressly acknowledges that, subject to extension according to the terms of Rider 1.1.4 attached to this Agreement, neither Agent nor Lenders are under any obligation whatsoever to extend or defer the Maturity Date or Borrower’s obligation to repay the Indebtedness in a manner entirely consistent with the schedule and requirements of this Agreement. Borrower further acknowledges that, subject to extension according to the terms of Rider 1.1.4 attached to this Agreement, neither Agent nor Lenders have made nor implied any agreement, commitment or understanding whatsoever to extend the Maturity Date or to provide refinancing of the Indebtedness (or any part thereof) upon the Maturity Date (or at any other time). Borrower expressly recognizes that the market for obtaining real estate financing including financing for properties similar in nature to the Property is volatile and uncertain and Borrower understands and agrees that the risk and obligation to pay the Indebtedness in accordance with the precise terms of this Agreement is the sole responsibility of Borrower and, in undertaking such responsibility, Borrower has taken into account the risks associated with the volatile market for credit availability.

9.34 Waiver of Jury Trial. BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. AGENT IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER, BORROWER, AGENT AND LENDERS EACH ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH OF THEM HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THE LOAN DOCUMENTS AND THAT EACH OF THEM WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS.

9.35 Consent To Jurisdiction. BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF DALLAS, STATE OF TEXAS AND UNCONDITIONALLY AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT’S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE
OTHER LOAN DOCUMENTS SHALL BE LITIGATED SOLELY IN ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF DALLAS, STATE OF TEXAS. BORROWER HEREBY EXPRESSLY UNCONDITIONALLY AND IRREVOCABLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS AND BORROWER UNCONDITIONALLY AND IRREVOCABLY AGREES THAT ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS SHALL BE BROUGHT, FILED AND LITIGATED BY BORROWER SOLELY IN ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF DALLAS, STATE OF TEXAS. BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO BORROWER, AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

9.36 **Definitional Provisions.** All terms defined in Schedule 1.2 attached to and made a part of this Agreement or defined elsewhere in this Agreement shall, unless otherwise defined therein, have the same meanings when used in the Note, Mortgage, any other Loan Documents, or any certificate or other document made or delivered pursuant hereto. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement. The word “include(s)” when used in this Agreement and the other Loan Documents means “include(s), without limitation,” and the word “including” means “including, but not limited to.”

9.37 **Interpretation.** With respect to all Loan Documents, whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The word “Obligations” is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed and contingent obligations, as well as all obligations to perform acts or satisfy conditions. No listing of specific instances, items or matters in any way limits the scope or generality of any language in the Loan Documents. This Agreement and all of the other Loan Documents shall not be construed more strictly against one party than against the other, merely by virtue of the fact that it may have been prepared primarily by counsel for one of the parties. Unless otherwise expressly provided in this Agreement or the other Loan Documents, any matter requiring Agent’s or Lenders’ consent or approval shall be interpreted as requiring Agent’s or Lenders’ consent or approval in the exercise of its sole, absolute and arbitrary discretion, shall be final and conclusive, and any such consent or approval shall be in writing, unless otherwise specifically indicated.

9.38 **Survival.** This Agreement and all covenants, agreements, representations and warranties made herein, in the certificates delivered pursuant hereto and in the other Loan Documents shall survive the making by Lenders of the Loan and the execution and delivery to Lenders of the Notes, and shall, unless a longer survival period is specified, continue in full force and effect so long as any of the Indebtedness is unpaid or such longer period if expressly set
9.39 **Exculpation**. Notwithstanding anything to the contrary contained in any of the Loan Documents with the exception of the Guaranty and the Environmental Indemnity delivered to Agent in connection with the Loan, neither Guarantor nor any Constituent Member (defined below) shall be personally liable, directly or indirectly, for the payment of the Indebtedness or any other liability evidenced by or created or arising under or in connection with this Agreement or any of the other Loan Documents, and neither Agent nor Lenders shall seek to enforce or recover any amounts, including any claims for indemnification, or any personal or deficiency judgment, against Guarantor or any Constituent Member, and Agent, Lenders and each of their successors and assigns hereby waive any such claims, recovery or liability. Nothing contained herein shall serve to affect, limit or waive the liability of Borrower or any Guarantor under the terms of the Guaranty or the Environmental Indemnity delivered to Agent in connection with this Agreement. As used herein, the term “Constituent Member” means (i) any direct or indirect partner, member, manager or affiliate of Borrower; (ii) any employee or agent of Borrower or any entities described in clause (i) above; and (iii) any shareholder, officer, director, partner, limited partner, member, manager, trustee, beneficiary, employee or agent of Borrower, Guarantor or any entity described in clauses (i) and (ii) above.

**ARTICLE 10**

**AGENT; RELATIONS AMONG LENDERS**

10.1 **Appointment, Powers and Immunities of Agent**.

(a) Each Lender hereby irrevocably appoints and authorizes Agent to act as its exclusive agent hereunder and under all other Loan Documents with such powers as are delegated to Agent by the terms of this Agreement and any other Loan Document, together with such other powers as are reasonably incidental thereto, and to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers as are set forth herein or therein together with such other powers as are incidental thereto. Each Lender hereby irrevocably authorizes Agent to execute and deliver each of the Loan Documents and to accept delivery of such of the other Loan Documents as may not require execution by Agent. Agent shall perform its obligations under this Agreement and the other Loan Documents in good faith according to the same standard of care as that customarily exercised by Agent in administering its own real estate loans, and Agent may take such action, or refrain from taking such action, as it shall deem, in its sole discretion, to be in the best interest of Lenders. Agent shall have no duties or responsibilities except those expressly set forth in this Agreement and any other Loan Document or required by Applicable Laws, and shall not by reason of this Agreement be a fiduciary or trustee for any Lender except to the extent that Agent acts as an agent with respect to the receipt or payment of funds, nor shall Agent have any fiduciary duty to Borrower nor shall any Lender have any fiduciary duty to Borrower or any other Lender. No implied covenants, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against Agent. Neither Agent nor any of its directors, officers, employees, agents, attorneys-in-fact or affiliates shall be responsible to Lenders for any recitals, statements, representations or warranties made by Borrower or any officer, partner or official of Borrower’s covenants and agreements in this Agreement and the other Loan Documents shall inure to the benefit of the respective legal representatives, successors and assigns of Lenders.
Borrower or any other Person contained in this Agreement or any other Loan Document, or in any certificate or other document or instrument referred to or provided for in, or received by any of them under, this Agreement or any other Loan Document, or for the value, legality, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or any other document or instrument referred to or provided for herein or therein, for the perfection or priority of any lien securing the obligations hereunder or thereunder or for any failure by Borrower or any Guarantor to perform any of its obligations hereunder or thereunder. Agent may employ agents and attorneys-in-fact and shall not be responsible, except as to money or securities received by it or its authorized agents, for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. Neither Agent nor any of its directors, officers, employees, agents, attorneys-in-fact or affiliates (collectively, the “Agent Releasees”) shall be liable or responsible to Lenders for any action taken or omitted to be taken by it or them hereunder or under any other Loan Document or in connection herewith or therewith, and each Lender hereby irrevocably, unconditionally and fully releases the Agent Releasees from, and irrevocably, unconditionally and fully waives all claims against the Agent Releasees for, any and all claims, disputes, liabilities, damages, debts, liens, actions and causes of action of any and every nature whatsoever, known or unknown, whether at law, by statute or in equity, in contract or in tort, which any Lender has, may have or may claim to have, against the Agent Releasees arising out of or with respect to any and all transactions, events, or matters of any kind or character relating to the Loan, the Loan Documents, the Property or the other Collateral, except for those matters arising directly from Agent’s gross negligence or willful misconduct. All funds received by Agent on behalf of Lenders with respect to the Loan shall be held by Agent for the benefit of all Lenders, may be commingled with the general funds of Agent (other than the Blocked Account and the Escrow Accounts), and shall be distributed pursuant to the terms and provisions of this Agreement.

(b) Agent shall have all necessary power, right and obligation to take any and all action of the type specified in this Agreement or any other Loan Document as being within Agent’s or Lender’s rights, powers or discretion or, with respect to Major Decisions, in accordance with directions from all Lenders. In the absence of such directions, Agent shall have, and Lenders acknowledge that Agent shall have, the exclusive power and authority (but under no circumstances shall be obligated), in Agent’s sole and absolute discretion, to take any action (including, without limitation, those acts described on Rider 10.1(b) attached hereto and made a part hereof) or refrain from taking any action, except that with respect to Major Decisions the direction or consent of all Lenders is required and Agent shall not take action constituting a Major Decision absent such direction or consent. Any action or inaction pursuant to any such direction, discretion or consent shall be binding on all Lenders. Agent shall have no liability to any Person as a result of (i) Agent acting or refraining from acting in accordance with the directions of all Lenders, (ii) Agent acting or refraining from acting in accordance with the directions of the Required Lenders with respect to those matters described in Section 10.3(a) or (c), (iii) Agent acting or refraining from acting (with respect to a Major Decision or, except for those matters described in Section 10.3(a) or (c), any other matter) in the absence of instructions to act from all Lenders, whether or not Agent has discretionary power to take such action, (iv) Agent acting or refraining from acting (with respect to those matters described in Section 10.3(a) or (c)) in the absence of instructions to act from the Required Lenders, whether or not Agent has discretionary power to take such action, or (v) Agent taking discretionary action it is authorized.
to take under this Agreement, except to the extent that such is caused by its own gross negligence or willful misconduct.

(c) Agent shall have the exclusive power, right and obligation to communicate and otherwise deal with the Borrower Parties in connection with or related to the Loan and no Lender shall communicate, or deal directly, with any Borrower Party in connection with or related to the Loan. No Lender shall respond to any communication received by any such Lender from any Borrower Party in connection with or related to the Loan and any such Lender immediately forward and direct any such communication to Agent and notify Agent of the attempted communication by such Borrower Party. No Borrower Party shall communicate, or deal directly, with any Lender in connection with or related to the Loan, and all such communication shall be made and directed to Agent.

10.2 Reliance by Agent. Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone or electronic mail) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Agent. Agent may deem and treat each Lender as the holder of its Note and interest in the Loan for all purposes hereof and shall not be required to deal with any Person who has acquired a Participation in the Loan from a Lender. As to any matters not expressly provided for by this Agreement or any other Loan Document, Agent shall in all cases be fully protected in acting, or in refraining from acting, in accordance with instructions signed by all Lenders, and such instructions of all Lenders and any action taken or failure to act pursuant thereto shall be binding on all Lenders and any other holder of all or any portion of the Loan or Participation therein.

10.3 Defaults; Remedies.

(a) Agent shall not be deemed to have knowledge of the occurrence of a Default or of an Event of Default unless Agent has received written notice from a Lender or Borrower strictly in accordance with this Agreement specifying such Default or Event of Default and stating that such notice is a “Notice of Default.” In the event that Agent receives such a written notice of the occurrence of a material Default or Event of Default, Agent shall give prompt notice thereof to Lenders. Agent shall promptly send to each Lender a copy of any notice of a Default or Event of Default that Agent sends to Borrower or Guarantor. Agent, following consultation with Lenders, shall (subject to Section 10.7) take such action with respect to such Default or Event of Default which is continuing, including with respect to the exercise of remedies or the realization on, or operation or disposition of, any or all of the Collateral or any other collateral for the Loan, as shall be agreed upon by the Required Lenders; provided, however, that, unless and until Agent shall have received such directions from the Required Lenders, if at all, Agent may take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem, in its sole discretion, to be in the best interest of Lenders and any action taken or failure to act in the absence of an agreement by the Required Lenders shall be binding on all Lenders and any other holder of all or any portion of the Loan or Participation therein. In no event shall Agent be required to take any such action which it determines would expose Agent to personal liability or would be contrary to or in violation of the Loan Documents or to Applicable Laws. Each Lender acknowledges and agrees that no
individual Lender has the right, power or authority to take any action under any of the Loan Documents or against Borrower or other Borrower Party or any Collateral, and shall not take or attempt to take any such action other than through Agent, and each Lender agrees not to attempt to separately enforce or exercise any of the provisions of any of the Loan Documents and any such attempt shall be null and void. Any Lender taking action in violation of the immediately preceding sentence agrees to indemnify and hold each other Lender and Agent harmless from and against claims, judgments, costs, liabilities, damages, losses and expenses (including court costs and reasonable attorneys’ fees) suffered, paid or incurred as a result of such Lender’s action.

(b) If Agent shall take possession of any of Collateral after the occurrence of any Event of Default under the Loan Documents (upon institution of foreclosure proceedings or otherwise), then (i) Agent on behalf of the Lenders shall, in the exercise of the standard of care described in Section 10.1(a), have all necessary power and authority to make and implement any and all decisions and actions regarding the ownership, management, maintenance and day-to-day operations of the Collateral, and (ii) Agent shall collect all rents and other operating revenues generated by such Collateral (“REO Revenue”), and pay from such REO Revenue all expenses incurred by it in connection with the ownership, operation, management (including the fees of an independent management firm) and maintenance of such Collateral (collectively, “REO Expenses”). Agent shall have the right to hire an independent third party management firm or provider of the Provider Operations selected by Agent, provided such firm is hired on an arms-length basis for a commercially reasonable fee and for a term that can be terminated at no cost upon no more than thirty (30) days prior notice.

(c) If there shall be a foreclosure sale of all or a portion of the Collateral, then, unless otherwise directed by the Required Lenders, Agent shall credit bid at the foreclosure sale on behalf of Lenders. The initial credit bid shall be determined by Agent. If the initial credit bid is less than the entire Indebtedness, Agent shall have the right, in its sole discretion, to raise the amount of said credit bid in response to any cash bid or bids made by others at said sale. Upon completion of a foreclosure sale and the conveyance of the Collateral to the highest bidder, Agent shall render an accounting for monies received and monies expended between the date of taking possession of such Collateral and the date of conveyance to the highest bidder, including, without limitation, expenses of foreclosure. If the highest bidder shall be someone other than Agent, then, upon receipt from the highest bidder of the amount of the bid, Agent will disburse all funds received pursuant to the terms and conditions of this Agreement and the other Loan Documents. If the highest bidder shall be Agent, or if title shall be transferred to Agent by other means (i.e., deed-in-lieu of foreclosure), then Agent will cause the Collateral to be legally conveyed to a single-asset, single-purpose entity formed and owned by Lenders (the “REO Entity”), the interests in which shall be owned by Lenders or their nominees in proportion to the outstanding principal balance of each Lender’s Note to the aggregate outstanding principal balance of all Notes. Until such time as the written agreement described in subsection (d) below is executed, Agent shall continue to have the sole power and authority with respect to the collateral as described in Section 10.3(b).

(d) If an REO Entity acquires the Collateral either by foreclosure or deed in lieu of foreclosure or otherwise, then Lenders agree to negotiate in good faith an operating or similar agreement (an “REO Agreement”) for the REO Entity relating to the ownership,
operation, maintenance, management, leasing and marketing of the Collateral. The terms of the REO Agreement shall include the following: (i) the Collateral will not be held as a long-term investment and will be marketed to sell such Collateral as Agent directs; (B) Agent shall have power and authority described in Section 10.3(b) and (C) each Lender shall waive any right to partition the Collateral. Agent shall be entitled to be paid an annual asset management fee (payable in equal monthly installments) in an amount equal to fifty basis points (0.50%) of the total committed Loan amount under the Loan Documents for its services in managing the REO Entity and Collateral (whether or not an independent management firm manages or leases the Collateral), plus all of Agent’s costs, charges and expenses incurred in connection with performing its services in managing the REO Entity and Collateral. Until such time as Lenders finalize and execute an REO Agreement, Agent shall continue to have the sole power and authority with respect to the collateral as described in Section 10.3(b).

(e) At all times Agent is in possession of the Collateral or the REO Entity owns the Collateral: (i) all REO Revenue in excess of REO Expenses and necessary reserves for any period of determination shall be distributed to Lenders in accordance with the terms and provisions of this Agreement; and (ii) the excess, if any, of REO Expenses over REO Revenue for any period of determination shall be paid pursuant to Section 10.5.

10.4 Rights of Agent as Lender. With respect to its Note and interest in the Loan, Agent in its capacity as a Lender hereunder shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not acting as Agent, and the terms “Lender” and “Lenders” shall include Agent solely in its capacity as a Lender and not in its capacity as Agent. Agent and its affiliates may (without having to account therefor to any Lender) accept deposits from, lend money to (on a secured or unsecured basis), and generally engage in any kind of banking, trust or other business with, Borrower or Guarantor (and any affiliates of them) as if it were not acting as Agent. Under no circumstances shall Agent in its capacity as a Lender hereunder have any liability, responsibility or obligation arising out of any act or omission in its capacity as Agent.

10.5 Sharing of Costs by Lenders; Indemnification of Agent. Each Lender shall pay its Pro Rata Share of any liabilities, costs or expenses suffered or incurred (to the extent not paid or reimbursed by Borrower after demand for payment is made by Agent) by or on behalf of Lenders in connection with any amounts due and owing under the Loan Documents, including, without limitation, costs and expenses of enforcement of the Loan Documents and any advances to pay taxes, insurance premiums or common charges or otherwise to preserve the lien of the Mortgage or to preserve or protect the Collateral. In the event a Lender fails to pay its share of expenses as aforesaid, and all or a portion of such unpaid amount is paid by Agent and/or one or more of the other Lenders, then the defaulting Lender shall immediately and without demand reimburse Agent and/or the other Lender(s) for the portion of such unpaid amount paid by it or them, as the case may be, together with interest thereon at the Default Rate from the date of payment by Agent and/or the other Lender(s). In addition, each Lender agrees to reimburse and indemnify Agent (to the extent it is not paid by or on behalf of Borrower, after demand for payment is made by Agent, under Section 5.3.6 or under the applicable provisions of any other Loan Document, but without limiting the obligation of Borrower under said Section 5.3.6 or such provisions), for such Lender’s Pro Rata Share, of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any
kind and nature whatsoever which may be imposed on, incurred by or asserted against Agent in any way relating to or arising out of this Agreement, any other Loan Document or any other documents contemplated by or referred to herein or the transactions contemplated hereby or thereby or the enforcement of any of the terms hereof or thereof or of any such other documents or instruments; provided, however, that no Lender shall be liable for (i) any of the foregoing to the extent they arise from the gross negligence or willful misconduct of the party to be indemnified or (ii) any loss of principal or interest with respect to Agent's Note or interest in the Loan.

10.6 Non-Reliance on Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance on Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own analysis of the collateral for the Loan and of the credit of Borrower and Guarantor, and its own decision to enter into this Agreement, and that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or any other Loan Document. Agent shall not be required to keep itself informed as to the performance or observance by Borrower of this Agreement or any other Loan Document or any other document referred to or provided for herein or therein or to inspect the properties (including, without limitation, the Premises) or books of Borrower. Except for notices, reports and other documents and information expressly required to be furnished to Lenders by Agent hereunder, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of Borrower or Guarantor (or any affiliate of them) which may come into the possession of Agent or any of its affiliates; provided, however, that promptly after a Lender’s request therefor, Agent shall deliver to such Lender a copy of any financial statement or report delivered to Agent pursuant to Section 5.1.1, and any such Lender acknowledges and agrees that Agent makes no representations or warranties (implied, express or otherwise) as to the accuracy or completeness of any such financial statements or reports and the data and calculations contained therein.

10.7 Failure of Agent to Act. Except for action expressly required of Agent hereunder, Agent shall in all cases be fully justified in failing or refusing to act hereunder:

(a) unless it shall have received further assurances (which may include cash collateral) of the indemnification obligations of Lenders under Section 10.5 in respect of any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action (and if any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for an additional indemnity and cease, or not commence, the action indemnified against until such additional indemnity is furnished), or
10.8 **Resignation or Removal of Agent.** Agent may resign on at least thirty (30) days’ written notice to Lenders and Borrower or upon the occurrence of an Event of Default. Agent may be removed at any time by the Required Lenders upon a final determination of Agent’s gross negligence or intentional misconduct or if the Required Lenders (without considering the vote of Agent in its capacity as Lender) elect to remove Agent following Agent’s election described in Section 10.7(a) (provided that Agent shall have the option, in a written notice to Lenders, to withdraw such election described in Section 10.7(a) within five (5) Business Days of its receipt of written notice of the Required Lenders’ election to remove Agent as aforesaid and in such instance, such election of the Required Lenders shall be null and void and of no force or effect), provided that Borrower and the other Lenders shall be promptly notified thereof. Upon such resignation or removal of Agent, the Required Lenders shall have the right to appoint a successor Agent. If no successor Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within twenty (20) days after the resignation or the Required Lenders’ removal of the retiring Agent, then the retiring or removed Agent may, on behalf of Lenders, appoint a successor Agent, which shall be one of Lenders, within ten (10) days. The Required Lenders or the resigning or removed Agent, as the case may be, shall upon the appointment of a successor Agent promptly so notify Borrower and the other Lenders. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Agent, and the retiring or removed Agent shall be discharged from its duties and obligations hereunder. After any retiring Agent’s resignation or removal hereunder as Agent, the provisions of this Article 10 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent.

10.9 **Amendments Concerning Agency Function.** Notwithstanding anything to the contrary contained in this Agreement, Agent shall not be bound by any waiver, amendment, supplement or modification of this Agreement or any other Loan Document which affects its duties, rights, obligations and/or functions hereunder or thereunder unless it shall have given its prior written consent thereto.

10.10 **Liability of Agent.** Agent (in its capacity as Agent and not as a Lender) shall not have any liabilities, obligations or responsibilities to Borrower on account of the failure of any Lender to perform its obligations hereunder or to any Lender on account of the failure of Borrower or any other Lender to perform its obligations hereunder or under any other Loan Document.

10.11 **Transfer of Agency Function.** Without the consent of Borrower or any Lender, Agent may at any time or from time to time transfer its functions as Agent hereunder to any of its offices wherever located in the United States, provided that Agent shall promptly notify Borrower and Lenders thereof.

10.12 **Non-Receipt of Funds by Agent; Adjustments.**
(a) Unless Agent shall have received notice from a Lender or Borrower (either one as appropriate being the “Payor”) prior to the date on which such Lender is to make payment hereunder to Agent of Loan proceeds or Borrower is to make payment to Agent, as the case may be (either such payment being a “Required Payment”), which notice shall be effective upon receipt, that the Payor will not make the Required Payment in full to Agent, Agent may assume that the Required Payment has been made in full to Agent on such date, and Agent in its sole discretion may, but shall not be obligated to, in reliance upon such assumption, make the amount thereof available to the intended recipient on such date. If and to the extent the Payor shall not have in fact so made the Required Payment in full to Agent, the recipient of such payment shall repay to Agent forthwith on demand such amount made available to it together with interest thereon, for each day from the date such amount was so made available by Agent until the date Agent recovers such amount, at the Default Rate, provided that nothing contained in this Agreement or the other Loan Documents shall excuse or give any Lender the right to delay its obligations to fund its Pro Rata Share of an Advance.

(b) If, after Agent has paid each Lender’s share of any payment received or applied by Agent in respect of the Loan, that payment is rescinded or must otherwise be returned or paid over by Agent, whether pursuant to any Insolvency Laws, the sharing of payments clause of any loan agreement or otherwise, such Lender shall, at Agent’s request, promptly return its share of such payment or application to Agent, together with such Lender’s proportionate share of any interest or other amount required to be paid by Agent with respect to such payment or application. In addition, if a court of competent jurisdiction shall adjudge that any amount received and distributed by Agent is to be repaid, each Person to whom any such distribution shall have been made shall either repay to Agent its share of the amount so adjudged to be repaid or shall pay over the same in such manner and to such Persons as shall be determined by such court.

10.13 Withholding Taxes. Each Lender represents to each of Borrower and Agent that such Lender is entitled to receive any payments to be made to it hereunder without the withholding or backup withholding of any tax and will furnish to Borrower and Agent such forms, certifications, statements and other documents and any required renewals thereof as either of them may reasonably request from time to time to evidence such Lender’s exemption from the withholding of any tax imposed by any jurisdiction or to enable Borrower and Agent to comply with any Applicable Laws relating thereto. Without limiting the effect of the foregoing, such Lender will furnish to Borrower and Agent promptly after their request therefor Form W-8ECI, Form W-8BEN or Form W-9 of the U.S. Internal Revenue Service, or such other forms, certifications, statements or documents and any required renewals thereof, duly executed and completed by such Lender, as evidence of such Lender’s complete exemption from the withholding and backup withholding of United States tax with respect thereto. Agent shall not be obligated to make any payments hereunder to such Lender in respect of the Loan until such Lender shall have furnished to Agent the requested form, certification, statement or document. Each Lender shall timely inform Agent and Borrower of any change to the information it previously provided on such certification, statement or document to the extent any such change affects such Lender’s exemption from the withholding and backup withholding of any tax.

10.14 Sharing of Payments among Lenders. If a Lender shall obtain payment of any principal of its Note or of interest thereon through the exercise of any right of setoff.
banker's lien or counterclaim, or by any other means (including direct payment), and such payment results in such Lender receiving a greater payment than it would have been entitled to had such payment been paid directly to Agent for disbursement to Lenders, then such Lender shall promptly purchase for cash from the other Lenders Participations in the Loan in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all Lenders shall share ratably the benefit of such payment. To such end Lenders shall make appropriate adjustments among themselves (by the resale of Participations sold or otherwise) if such payment is rescinded or must otherwise be restored.

10.15 **Possession of Documents**. Each Lender shall maintain possession of its own Note. Agent shall hold all other Loan Documents and related documents in its possession and maintain separate records and accounts with respect to the Loan, reflecting the interests of Lenders in the Loan, and shall permit Lenders and their representatives access at all reasonable times to inspect such Loan Documents, related documents, records and accounts.

10.16 **Effect of a Lender’s Failure to Make an Advance**. In the event any Lender fails for any reason to fund the portion it is required to fund of any Advance (a "Delinquency Amount") by 3:00 p.m. (Dallas time) on the next Business Day after the date established by Agent as the date such advance is to be made, such Lender shall be a "Delinquent Lender" for all purposes hereunder until and unless such delinquency is cured in accordance with the terms of and by the time permitted under Section 10.17, and the following provisions shall apply:

(a) Agent shall notify (such notice being referred to as the "Delinquency Notice") each Lender and Borrower of any Lender’s failure to fund. Each Non-Delinquent Lender shall have the right, but in no event or under any circumstance the obligation, to fund all or any portion of the Delinquency Amount and the Delinquent Lender agrees to repay upon demand to each of the Lenders who have advanced a portion of the Delinquency Amount the amount advanced on behalf of the Delinquent Lender, together with interest thereon at the Default Rate from the date such amount was advanced until repaid by the Delinquent Lender. If more than one Lender elects to advance a portion of the Delinquency Amount such Lenders’ advances shall be made based on the relative ratable shares of the Loan of each advancing Lender or as otherwise agreed to by such Lenders. In cases where a Delinquent Lender fails to fund the portion required to be funded by it of an Advance and none of the other Lenders advance the Delinquent Lender’s unfunded share of the applicable Advance pursuant to this subsection (a), Agent shall so notify Borrower and, within thirty (30) days of Borrower’s receipt of such notice, Borrower shall either: (i) cause a Replacement Lender (who shall be an Eligible Lender) to assume the Delinquent Lender’s obligations with respect to the entire undisbursed portion of the Delinquency Lender’s Individual Loan Commitment in accordance with Section 10.20, or (ii) commit in writing to Agent and Lenders, prior to any subsequent Advance, that Borrower shall fund the entire undisbursed portion of the Delinquency Lender’s Individual Loan Commitment, and submit satisfactory evidence to Agent, in its sole and absolute discretion, that Borrower is and shall be able to meet such commitment. So long as a Replacement Lender has not assumed the Delinquency Lender’s obligations with respect to the entire undisbursed portion of the Delinquency Lender’s Individual Loan Commitment in accordance with Section 10.20, the obligation of the Non-Delinquent Lenders to fund their respective portions of such Advance and each subsequent Advance shall be conditioned on Borrower’s written commitment described in...
(i) above and Borrower depositing with Agent, no later than five (5) Business Days prior to each Advance, the portion of the costs and expenses that are the subject of such Advance in an amount equal to the Delinquent Lender’s portion of such Advance, which shall be disbursed by Agent in accordance with the terms hereof.

(b) The failure of any Lender to pay any Delinquency Amount shall not relieve any other Lender of its obligation, if any, hereunder to make its ratable portion of the Advance on the date of such Advance, but no Lender shall be responsible for the failure of any other Lender to make its ratable portion of the Advance to be made by such other Lender on the date of any Advance. If, pursuant to Section 2.1, Lenders are not obligated to make an Advance, Agent may nonetheless make a determination in its sole discretion that Lenders shall make such Advances and all Lenders shall be bound by such determination.

(c) Subject to a Delinquent Lender’s right to cure as provided in Section 10.17, but notwithstanding anything else to the contrary contained in this Agreement, the Delinquent Lender’s interest in, and any and all amounts due to a Delinquent Lender under, the Loan Documents (including, without limitation, all principal, interest, fees and expenses) shall be subordinate in lien priority and to the repayment of all amounts (including, without limitation, interest) then or thereafter due or to become due to the Non-Delinquent Lenders under the Loan Documents (including future advances). Subject to a Delinquent Lender’s right to cure as provided in Section 10.17, Agent shall make no payment to a Delinquent Lender until the Non-Delinquent Lenders have been paid in full their respective Pro Rata Share of all Indebtedness, it being understood that all sums which would otherwise be due a Delinquent Lender under the Loan Documents (interest, principal, fees and all other amounts) shall be distributed to the Non-Delinquent Lenders (each Non-Delinquent Lender receiving its ratable share thereof) as follows:

- first, all sums which constitute a payment of principal under the Loan shall be treated as a repayment of principal under the Notes of the Non-Delinquent Lenders; and, next, all sums which constitute a payment of interest, fees, Charges or any other item under the Loan (other than a payment of principal) shall be treated as additional interest under the Loan and shall not be deemed to be a repayment of principal, provided that Agent shall deduct from amounts due (or, in the case of a Delinquent Lender, amounts that would otherwise be payable to such Delinquent Lender) a Lender in default under its obligations under Section 10.5, the amount owing by such Lender pursuant to said Section 10.5 and pay the amount so deducted to itself, the other Lenders, or such other party as is entitled to such amount, as applicable. No payments received by any Non-Delinquent Lender as set forth above shall release or in any way limit a Delinquent Lender’s obligations under this Agreement, including, without limitation, Delinquent Lender’s obligations to indemnify Agent and each of the Non-Delinquent Lenders pursuant to Section 10.18. Regardless of whether a Delinquent Lender cures its failure in accordance with Section 10.17, under no circumstances (i) shall Agent or any Non-Delinquent Lender have any obligation to pay, refund or return to a Delinquent Lender (or a former Delinquent Lender) any payments that Agent or any Non-Delinquent Lender received pursuant to this Section 10.17(c), or (ii) shall any Delinquent Lender (or a former Delinquent Lender) be entitled to receive its Pro Rata Share of any fees payable by Borrower in connection with the Loan, including, without limitation, the Exit Fee, the Minimum Interest Lookback Amount, the Amortization Conversion Fee and any extension fee, and notwithstanding anything in this Agreement of the other Loan Documents to the contrary, the portion of any such fees that would otherwise be due a
Delinquent Lender under the Loan Documents shall be paid to the Non-Delinquent Lenders (each Non-Delinquent Lender receiving its ratable share thereof).

(d) No Delinquent Lender shall have the right to participate in any discussions among and/or decisions by Lenders hereunder (including, without limitation, any Major Decision) and/or under the other Loan Documents. Further, subject to Section 10.17, any Delinquent Lender shall be bound by any amendment to, or waiver of, any provision of, or any action taken or omitted to be taken by Agent and/or the Non-Delinquent Lenders under, any Loan Document which is made subsequent to the Delinquent Lender’s becoming a Delinquent Lender. Nothing contained in this Agreement or the other Loan Documents is intended to waive or limit any right, claim or cause of action, in law or in equity, of any Non-Delinquent Lender or Borrower against any Delinquent Lender, it being understood that any Non-Delinquent Lender or Borrower may proceed directly against any such Delinquent Lender. Each Delinquent Lender, on behalf of itself and its successors and assigns, releases and discharges Agent from, and irrevocably waives any and all rights it may have under any Applicable Law with respect to, any and all liability, claims, damages, or causes of action, arising out of, connected with or incidental to the Loan, the Loan Documents, the Collateral, any action taken or not taken, and any other matter relating thereto.

(e) If, pursuant to the operation of Section 10.12, an Advance is made without Agent’s receipt of a Delinquent Lender’s portion thereof, in addition to Borrower’s obligations under Section 10.12, Borrower shall, upon demand of Agent, refund the entire such Advance to Agent. Borrower’s failure to do so within ten (10) days of such demand shall, notwithstanding anything to the contrary contained herein or in the Mortgage, constitute an Event of Default. Upon its receipt of such funds from Borrower, Agent shall promptly remit to each Non-Delinquent Lender its appropriate share thereof.

10.17 **Cure by Delinquent Lender**. Provided that no Replacement Lender has assumed the Delinquent Lender’s obligations pursuant to Section 10.20, Delinquent Lender may cure a delinquency arising out of its failure to fund its required portion of any Advance if it remits to Agent (1) its required portion of such Advance (together with interest thereon at the Default Rate from the date such Advance was to have been made if such Advance was made by Agent and not refunded by Borrower pursuant to either Section 10.12 or Section 10.16(e)), and (2) an administrative fee, for Agent’s own account, in the amount of $10,000 plus all of Agent’s reasonable costs and expenses (including, without limitation, attorneys’ fees) incurred in connection with such delinquency and cure, in which event Agent shall so notify Borrower and the Non-Delinquent Lenders (i) of its receipt of such funds and (ii)(A) if the Advance that was the subject of the delinquency shall not have been made (or shall have been refunded by Borrower pursuant to Section 10.16(e)), of the rescheduled date of the Advance (which shall be no sooner then three (3) Business Days after such notice) or (B) if Agent shall have funded the entire Advance that was the subject of the delinquency (including the Delinquent Lender’s portion) and Borrower shall not have refunded such Advance pursuant to Section 10.16(e), of its intention to reimburse itself from funds received from the Delinquent Lender (which reimbursement is hereby authorized) for funding the Delinquent Lender’s required portion of the Advance. In the event any Delinquent Lender cures a delinquency, such Delinquent Lender nonetheless shall be bound by any amendment to or waiver of any provision of, or any action taken or omitted to be taken by Agent and/or the Non-Delinquent Lenders under, any Loan

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10.18 **Delinquent Lender Not Excused.** Nothing contained in Sections 10.16 or 10.17 shall release or in any way limit a Delinquent Lender’s obligations as a Lender hereunder and/or under any other of the Loan Documents. Further, a Delinquent Lender shall fully, unconditionally and irrevocably indemnify and hold harmless Agent and each of the Non-Delinquent Lenders from any claim, loss, or costs incurred by Agent and/or the Non-Delinquent Lenders as a result of a Delinquent Lender’s failure to comply with the requirements of this Agreement or any of the other Loan Documents, including, without limitation, any and all additional losses, damages, costs and expenses (including, without limitation, attorneys’ fees) incurred by Agent and any Lender as a result of and/or in connection with (i) a Non-Delinquent Lender’s advance of all or any portion of the Delinquency Amount, (ii) any enforcement action brought by Agent or any Non-Delinquent Lender against a Delinquent Lender, and (iii) any action brought against Agent and/or Lenders. The indemnification provided above shall survive any termination of this Agreement.

10.19 **Notices Regarding Delinquent Lender.** Notices by Agent or Lenders pursuant to Sections 10.16 or 10.17 may be by telephone (to be promptly confirmed in writing).

10.20 **Replacement Lender.** If any Lender becomes a Delinquent Lender and none of the other Lenders elects to be an Electing Lender pursuant to Section 10.16, Borrower shall have the right, provided there exists no Default or Event of Default, to cause an Eligible Lender to assume the Delinquent Lender’s obligations with respect to the entire undisbursed portion of the Delinquent Lender’s Individual Loan Commitment on the then-existing terms and conditions of the Loan Documents (such replacement institution, a “Replacement Lender”). Such assumption shall be pursuant to a written instrument satisfactory to Agent. Upon such assumption and the payment by the Replacement Lender to Agent of a fee, for Agent’s own account, in the amount of $5,000 plus all of Agent’s reasonable costs and expenses (including, without limitation, attorneys’ fees) incurred in connection with such assumption, the Replacement Lender shall become a “Lender” for all purposes hereunder, with an Individual Loan Commitment in an amount equal to the entire undisbursed portion of the Delinquent Lender’s Individual Loan Commitment, and the Delinquent Lender’s Individual Loan Commitment shall automatically be reduced by the entire undisbursed portion of the Delinquent Lender’s Individual Loan Commitment (and until such time Agent shall have no obligation to communicate with or accept or take into account any communication from any Replacement Lender and Agent shall continue to deal solely and directly with any such the Delinquent Lender in connection with the Loan, this Agreement and the other Loan Documents). In connection with the foregoing, Borrower shall execute and deliver to the Replacement Lender and the Delinquent Lender, at the cost and expense of the Delinquent Lender, replacement notes substantially in the form of Exhibit E and stating: “This Note is a replacement note as contemplated by Section 10.20 of the Loan Agreement; it replaces and is in lieu of that certain note made by Maker dated [date of Note] to the order of [Delinquent Lender] in the principal sum of [Delinquent Lender’s original Individual Loan Commitment].” Such replacement notes shall be in amounts equal to, in
the case of the Replacement Lender’s note, the entire undisbursed portion of the Delinquent Lender’s Individual Loan Commitment and, in the case of the Delinquent Lender’s note, its Individual Loan Commitment, as reduced as aforesaid. Such replacement notes shall constitute “Notes” and the obligations evidenced thereby shall be secured by the Mortgage. In connection with Borrower’s execution of replacement notes as aforesaid, Borrower shall deliver to Agent such evidence of the due authorization, execution and delivery of the replacement notes and any related documents as Agent may reasonably request. If the Replacement Lender is not incorporated under the Laws of the United States or a state thereof, it shall, prior to the first date on which interest or fees are payable hereunder for its account, deliver to Borrower and Agent certification as to exemption from deduction or withholding of any United States federal income taxes in accordance with Section 10.13. The execution and delivery of replacement notes as required above shall be a condition precedent to any further advances of Loan proceeds. Upon receipt of its replacement note, the Delinquent Lender will return to Borrower its note(s) that was replaced, provided that the delivery of a replacement note to the Delinquent Lender pursuant to this Section 10.20 shall operate to void and replace the note(s) previously held by the Delinquent Lender regardless of whether or not the Delinquent Lender returns same as required hereby. A Replacement Lender’s assumption of the Delinquent Lender’s obligations pursuant to this Section 10.20 shall not be deemed a cure of the Delinquent Lender’s failure to perform its obligations under this Agreement and in such event the Delinquent Lender shall remain and be deemed to be for all purposes under this Agreement and the other Loan Documents a Delinquent Lender.

At the cost and expense of the Delinquent Lender, Borrower, Agent and Lenders shall execute such modifications to the Loan Documents as shall, in the reasonable judgment of Agent, be necessary or desirable in connection with the substitution of Lenders in accordance with the foregoing provisions of this Section.

Lenders shall reasonably cooperate with Borrower’s attempts to obtain a Replacement Lender, but they shall not be obligated to modify the Loan Documents in connection therewith, other than modifications pursuant to the immediately preceding paragraph. As part of the first advance of Loan proceeds following the admission of the Replacement Lender, the Replacement Lender shall advance to Borrower, subject to the satisfaction of all conditions of this Agreement, an amount equal to the amounts paid by Borrower pursuant to Section 2.1(ii).

10.21 Relationship; Other Matters. No term in this Agreement or in the other Loan Documents and no course of dealing between Agent and Lenders shall be deemed to create any relationship of partnership or joint venture or any fiduciary duty by Agent to Lenders. Lenders agree to be fully bound by all of the terms and provisions of Sections 9.34 and 9.35.
IN WITNESS WHEREOF, the parties, intending to be legally bound hereby, have duly executed this Agreement (if in counterparts, each of which shall be deemed an original) to be effective as of the date set forth in the first paragraph hereof.

BORROWER:

CALIFORNIA PROTON TREATMENT CENTER, LLC, a Delaware limited liability company

By: /s/ James Thomson
Name: James Thomson
Title: Manager & Vice President

AGENT AND LENDER:

ORIX CAPITAL MARKETS, LLC, a Delaware limited liability company (as Agent and Lender)

By: /s/ Michael J. Moran
Name: Michael J. Moran
Title: CEO

LENDER:

VARIAN MEDICAL SYSTEMS INTERNATIONAL AG, a Swiss corporation (as Lender)

By: /s/ John W. Kuo
Name: John W. Kuo
Title: Director

[Signature Page to Loan and Security Agreement]
The following terms shall have the following meanings:

“ACH” means a pre-authorized Automated Clearinghouse transaction.

“Account Debtor” means “account debtor”, as defined in Article 9 of the Code, and any other Person obligated on any Account of a Borrower Party or Provider. The term “Account Debtor” specifically includes, without limitation, any Insurer, Non-Governmental Payor, Government Account Debtor and any Patient who is not covered by an Insurer or other Non-Governmental Payor and has promised to pay for Medical Services provided by Provider at the Facility.

“Accounts” means collectively (a) any right to payment of a monetary obligation, whether or not earned by performance, (b) without duplication, any “account” (as that term is defined in the Code now or hereafter in effect), any accounts receivable, any “health-care-insurance receivables” (as that term is defined in the Code now or hereafter in effect), any “payment intangibles” (as that term is defined in the Code now or hereafter in effect) and all other rights to payment and/or reimbursement of every kind and description, whether or not earned by performance, (c) all accounts, general intangibles, rights, remedies, guarantees, supporting obligations, letter of credit rights and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under any of the Loan Documents in respect of the foregoing, (d) all information and data compiled or derived by Borrower or Provider or to which either of them is entitled in respect of or related to the foregoing (other than any such information and data subject to legal restrictions of patient confidentiality), and (e) all proceeds of any of the foregoing.

“Accrued Interest” means all accrued and unpaid interest on the outstanding principal balance of the Loan from time to time.

“Additional Costs” means any out-of-pocket costs, losses, liabilities, fees or expenses actually incurred by any Lender which it determines are attributable to its making or maintaining its Pro Rata Share of the Loan, or its obligation to make any Advances, or any reduction in any amount receivable by any Lender under the Loan or its Note.

“Advance” means each advance of any portion of the Loan Amount (including advances of Holdbacks) other than the Initial Disbursement, and each advance from a Reserve.

“Advance Date” has the meaning set forth in Section 3.2.7.

“Affiliate” means with respect to a specified Person, any other Person which, directly or indirectly, through one or more interiaries, Controls or is Controlled by or is under common control with such Person, including, without limitation, any general or limited partnership in which such Person is a partner, or any such Person’s immediate family members, direct ancestors or descendants of a person.

“Agent” has the meaning set forth in Section 1.1.2.
“Agent Releasees” has the meaning set forth in Section 10.1.

“Agent’s Address” has the meaning set forth in Section 1.1.2.

“Agreement” means this Loan and Security Agreement.

“Amortization Commencement Date” has the meaning set forth in Section 1.1.4.

“Applicable Laws” means all applicable statutes, laws, treaties, regulations, rules, ordinances or orders of any kind whatsoever, including court decisions interpreting, administering or applying the foregoing. The term Applicable Laws shall include all Healthcare Laws, zoning or building laws or ordinances; all environmental protection laws or regulations, including, without limitation, all Environmental Laws; any rules, regulations orders of any governmental agency, department, commission, board, bureau or other instrumentality or Governmental Authority; any building or environmental permit issued to Borrower, the Proton Equipment Vendor, Provider or in respect of the Property and/or the Project; any order, writ or injunction of any court having jurisdiction over Borrower, the Property and/or the Project; and any condition, easement, right of way, covenant or restriction of record affecting Borrower, the Property and/or the Project.

“Appraisal” means a market appraisal of the Property prepared by a licensed MAI appraiser engaged or approved by Agent and satisfies either (a) the requirements of the “Uniform Standards of Professional Appraisal Practice” as adopted by the Appraisal Standards Board of the Appraisal Foundation, or (b) the guidelines in Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, in either case as in effect on the Closing Date.

“Approved CapEx Expenses” means Project Costs actually incurred by Borrower and included in the Project Budget.

“Approved Plans” means complete plans, drawings, specifications and scope of work, that comply with Applicable Laws and have been approved in writing by Agent, for any Construction Project. Agent acknowledges that it has approved the Construction Documents (as that term is defined in the General Contractor’s Agreement) as the “Approved Plans.”

“Architect” means the licensed architect, if any, engaged by Borrower in connection with a Construction Project.

“Assignee” has the meaning set forth in Section 9.8.

“Assignment and Acceptance Agreement” shall mean an Assignment and Acceptance Agreement in the form of Exhibit F attached hereto and made a part hereof (with all blanks noted therein appropriately filled in), delivered to Agent in connection with an assignment to an Assignee of all or a portion of a Lender’s interests under this Agreement pursuant to the terms, conditions and provisions of this Agreement.

“Authorizing Entity” means each corporation, partnership, limited partnership, limited liability company or other legal entity whose consent or authorization is required for
Borrower to enter into, and perform its obligations under, this Agreement and the other Loan Documents.

“Bankruptcy Action” means, with respect to any Person, if such Person: (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) consents to or files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any bankruptcy or insolvency proceeding, (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver, liquidator, sequestrator, custodian or any similar official of or for such Person or of all or any substantial part of its properties, (vii) fails to have dismissed within one hundred twenty (120) days after the commencement thereof, any proceeding against such Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, (viii) fails to have vacated or stayed within ninety (90) days after the appointment thereof without such Person’s consent or acquiescence, a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, or within ninety (90) days after the expiration of any such stay, fails to have the appointment vacated or (ix) takes any action in furtherance of any of the foregoing.

“Bankruptcy Code” means Chapter 11 of Title II of the United States Code (11 U.S.C. §101 et seq.), as it may be amended, restated, replaced or superseded from time to time.

“Basis Point” means one one-hundredth of one percent.

“Blocked Account” means an account established for the collection of all funds deposited directly by Provider and other debtors of Borrower, which account shall be entitled “ORIX Capital Markets, LLC, as Agent, pursuant to Loan and Security Agreement dated as of September 30, 2011 - Blocked Account,” or such other designation as may be required by Agent, and shall be under the sole dominion and control of Agent and subject to such terms and conditions as Agent shall determine to be satisfactory.

“Board of Managers” means the Board as that term is defined in the Organizational Documents.

“Borrower” has the meaning set forth in Section 1.1.1.

“Borrower’s Address” has the meaning set forth in Section 1.1.1.

“Borrower’s Counsel” has the meaning set forth in Section 1.1.1.

“Borrower’s Counsel’s Address” has the meaning set forth in Section 1.1.1.

“Borrower’s Equity” has the meaning set forth in Section 3.1.21.

“Borrower’s Knowledge” means the actual knowledge, after reasonable inquiry, of Guarantor, each member of the Board of Managers, and each individual director, officer,
employee or representative of a Borrower Party who exercises supervisory authority or has supervisory responsibilities with respect to the Property and/or the Project.

“Borrower Parties” means, collectively, Borrower, each Authorizing Entity and Guarantor; and “Borrower Party” means any of the foregoing individually.

“Broker” has the meaning set forth in Section 1.1.5.

“Budget” has the meaning given to that term in the Facility Lease.

“Building Permits” has the meaning set forth in Section 4.1.1(u).

“Business Day” means any weekday other than any holiday in the State of Texas during which banks are required or authorized to be closed.

“CapEx Holdback” has the meaning set forth in Section 1.1.4.

“Cash Trap Event” has the meaning set forth in Exhibit E to the Closing Certificate of Borrower.

“CP” has the meaning set forth in Section 5.1.5(g).

“Change Order” means any modification, addition or other change either to any Construction Document after it has been approved by Agent, or to the scope or specifications of any Construction Project after the same have been approved by Agent.

“Charges” means any and all costs and expenses of the Loan, and any and all other fees and charges owing to Agent or any Lender pursuant to the Loan Documents, including all costs and expenses incurred by Agent or any Lender in connection with the documentation of the Loan or any modification, extension, renewal or amendment thereof, all workout costs relating to the Loan, all recording, filing and registration fees and charges, mortgage or documentary taxes, UCC searches, title and survey charges, all fees and disbursements of Agent’s or any Lender’s attorneys, consultants and engineers, any out-of-pocket costs involved in the disbursement and administration of the Loan, any repair or maintenance costs incurred by Agent or any Lender with respect to the Property and/or the Project, attorneys’ fees relating to the syndication of or participation in the Loan, if any, all payments made to remove or protect against Liens other than those which are Permitted Exceptions or otherwise for the protection of the Collateral, all costs and expenses incurred by Agent or any Lender in connection with the determination of whether or not Borrower has performed the obligations undertaken by Borrower hereunder or has satisfied any conditions precedent to the obligations of Agent or Lenders hereunder, and any out-of-pocket costs in connection with evaluating any Borrower request, including any request for consent or approval of any matter, regardless of whether it is granted, including the review of any proposed Lease or non-disturbance and attornment agreement.

“Closing Certificate of Borrower” has the meaning set forth in Section 3.1.11.

“Closing Checklist” means the checklist prepared by Agent and furnished to Borrower of documents, certificates, reports, surveys, title property insurance requirements and
other items and deliveries that Borrower is obligated to deliver or satisfy as a condition to the Initial Disbursement.

“Closing Date” means the date the Initial Disbursement is made.

“CMS” means the Centers for Medicare and Medicaid Services, a division of the U.S. Department of Health and Human Services.

“Code” means the Uniform Commercial Code as adopted in the State of Texas, as amended from time to time.

“Collateral” means the Property and all other assets of Borrower, whether now owned or hereafter acquired, and all proceeds thereof.

“Collateral Reserve” means a reserve account established by and under the control of Agent as additional security for the Indebtedness in accordance with Section 2.5.5.

“Commitment Fee” has the meaning set forth in Section 1.1.4.

“Completion” or “Complete” means one hundred percent (100%) completion of construction, including all punch list items, in a good and workmanlike manner and in compliance with all Applicable Laws, the applicable Construction Documents as approved by Agent and matters included in Permitted Exceptions, and free and clear of all liens, claims, encumbrances and rights of others, other than Permitted Exceptions, as evidenced by the issuance of certificates of completion by the Construction Consultant, the Architect and the General Contractor, in each case in form and substance acceptable to Agent and, if available or required under Applicable Law, a final or partial certificate of occupancy and, as applicable, acceptance of completion by the applicable tenant.

“Construction Consultant” means an inspecting architect, engineer, physicist, commissioning consultant or other consultant or representative as Agent may designate and engage to inspect the Property as construction progresses.

“Construction Contracts” means the General Contractor’s Agreement, the Proton System Purchase Agreement and each other contract or agreement to which Borrower or any agent of Borrower is a party, providing for the provision of construction services (including architect’s or engineering services), labor or material in connection with any of the Construction Work.

“Construction Defect” has the meaning given to that term in the Facility Lease.

“Construction Documents” means each of the following as approved by Agent with respect to each Construction Project: the Approved Plans, a completion schedule, the Project Budget and the applicable Construction Contracts.

“Construction Project” means and refers to each discrete Construction Work project. For example, any capital improvements to the Property, including renovations and additions, including, without limitation, the construction of the Improvements and the
installation, testing and commissioning of the Proton System will constitute a Construction Project.

“Construction Work” means all interior or exterior construction and construction-related activities, including without limitation, all work to be performed pursuant to the Proton System Purchase Agreement, all renovations, alterations, additions, expansions, capital improvements, repairs and replacements to or at the Improvements.

“Contested Taxes” means any Impositions which Borrower is contesting in accordance with the provisions of the Loan Documents.

“Contingency Holdback” has the meaning set forth in Section 1.1.4.

“Control” or “Controlling”: As such term is used with respect to any entity, including the correlative meanings of the terms “controlled by” and “under common control with”, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such person or entity through the ownership of 50% or more of the outstanding voting securities in such entity.

“Corporate Service Provider” means one of the following nationally-recognized companies that provides professional independent managers, directors and or trustees: (i) Corporation Service Company, (ii) CT Corporation, (iii) National Registered Agents, Inc., and (iv) Independent Directors Services, Inc. (provided that Borrower and Agent may add or replace, by mutual agreement, any one or more of the foregoing Corporate Service Providers with other nationally-recognized companies that have been used by other borrowers for commercial mortgage loans).

“Debt Service” means the sum of (i) the product obtained by multiplying the outstanding principal balance of the Loan by the Interest Rate as of the date of determination and (ii) the Minimum Amortization Payment payable in the month immediately preceding the date of determination multiplied by twelve (12).

“Default” means the existence of any circumstance or the occurrence of any event which with the passage of time or the giving of notice, or both, would constitute an Event of Default.

“Default Rate” has the meaning set forth in Section 1.1.4.

“Deficiency” means (a) with respect to any Construction Project, the amount, if any, by which the hard, soft and other costs to Complete such Construction Project exceeds the sum of any retainage for work completed with respect to such Construction Project plus the undisbursed amount of any Holdback, or that portion of a Holdback, that has been allocated to such Construction Project, as estimated or determined by Agent in its reasonable discretion; and (b) with respect to all other Holdbacks, the amount by which the unfunded balance of each such Holdback will be insufficient to fully pay the unfunded costs and expenses for which each such Holdback was created.

“Delinquency Amount” has the meaning set forth in Section 10.16(a).
“Delinquency Notice” has the meaning set forth in Section 10.16(a).

“Delinquent Lender” has the meaning set forth in Section 10.16.

“Deposits” means all amounts Borrower is required to deposit with Agent pursuant to the terms of this Agreement or the other Loan Documents, including the Monthly Tax Deposits, the Monthly Insurance Deposits, the Replacement Reserve, the Marketing Reserve, the Collateral Reserve, the O&M Reserve, the Subaccounts and any other deposits held by Agent, including tenant security deposits, Loss Recoveries (unless and until the same are applied to the Indebtedness) and all funds deposited with Agent pursuant to Section 5.2.4; provided, however, no amounts on deposit in the Operating Deficit Escrow Account, the Pre-Opening Expenses Escrow Account or the Working Capital Escrow Account shall be deemed to be “Deposits” hereunder.

“Development Fee” has the meaning set forth in Section 2.2.

“Development Fee Holdback” has the meaning set forth in Section 1.1.4.

“Eligible Expenses” means ordinary and necessary operating expenses of the Property during the applicable month which are included in the Operating Budget or otherwise reasonably incurred in the ordinary course of Borrower’s business, excluding (i) any expenses paid to Borrower or any Affiliate of Borrower, unless expressly permitted by Agent, (ii) debt service and any other amounts due Agent and Lenders under the Loan Documents, (iii) all expenses relating to the Facility that are the obligation of Provider under the Facility Lease, (iv) Premiums, Impositions, Support Services Fees and all payments to Ground Lessee under the terms of the Ground Sublease, and (v) all Project Costs.

“Eligible Lender” means (i) a real estate investment trust, bank, savings and loan association, investment bank, financial institution, insurance company, trust company or commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan, investment company, money management firm or “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional “accredited investor” within the meaning of Regulation D under the Securities Act of 1933, as amended, or any entity Controlled by any of the entities described above, provided such Person has total assets (in name or under management) in excess of $750,000,000 and (except with respect to a pension advisory firm or similar fiduciary) capital/statutory surplus or shareholder’s equity in excess of $200,000,000 and is acceptable to Agent in its sole and absolute discretion, or (ii) any Lender.

“Engineering Reports” means the property condition reports relating to the physical condition of the Property and the Project prepared by consultants engaged or approved by Agent and either addressed to Agent or covered by a reliance letter in favor of Agent confirming that Agent may fully rely upon the contents of such report.

“Environmental Claim” means any claim made by a Governmental Authority or third party relating to the presence at, on, under or about, or the release from, the Property of Hazardous Substances.
“Environmental Indemnity” means the Unsecured Environmental Indemnity Agreement executed by Borrower and Guarantor in favor of Agent, for the benefit of Lenders.

“Environmental Law” means and includes, without limitation, any federal, state or local law, whether under common law, statute, rule regulation or otherwise, requirements under permits or other authorizations issued with respect thereto, and other orders, decrees, judgments, directive or other requirements of any Governmental Authority relating to or imposing liability or standards of conduct, disclosure or notification with regard to the protection of human health, the environment, ecological conditions, Hazardous Substances or any activity involving Hazardous Substances, all as previously or now existing and in the future to be amended.

“Environmental Report” means any report relating to the presence or possible presence of Hazardous Substances at, on, under or about the Property or the compliance of the Property with Environmental Laws.

“Environmental Site Assessment” means a Phase I and, if required by Agent, a Phase II and other environmental site assessments covering the Property and the Project prepared by a licensed hydrogeologist, licensed environmental consulting firm engaged or approved by Agent in conformance with the current standards promulgated by ASTM and the requirements of Agent, and either addressed to Agent or covered by a reliance letter in favor of Agent confirming that Agent may fully rely upon the contents of such report.

“ERISA” means The Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder from time to time.

“Error” has the meaning given to that term in the O&M Agreement.

“Escrow Account” and “Escrow Accounts” have the meaning set forth in Section 2.5.2.

“Escrow Funding Notice” has the meaning set forth in Section 2.5.2.

“Event of Default” has the meaning set forth in Section 7.1.

“Excess Revenues” has the meaning set forth in Section 2.6.

“Executive Personnel” has the meaning given to that term in the Facility Lease.

“Extension Notice” has the meaning set forth in Rider 1.1.4.

“Extension Option” has the meaning set forth in Rider 1.1.4.

“Extension Term” has the meaning set forth in Rider 1.1.4.

“Facility Lease” has the meaning set forth in Section 1.1.3.
“Final Acceptance” has the meaning given to that term in the Proton System Purchase Agreement.

“Financing Statement” means financing statements filed under the Code and any amendments thereto or extensions or terminations thereof.

“First Room Acceptance” has the meaning given to that term in the Proton System Purchase Agreement.

“Force Majeure Event” means any event or condition beyond the reasonable control of Borrower, including, without limitation, strikes, labor disputes, the elements (other than weather conditions which are normal and customary at the time in the geographic area where the Property is located), governmental restrictions, regulations or controls, enemy action, civil commotion, fire, casualty, accidents, mechanical breakdowns or shortages of, or inability to obtain, labor, utilities or materials, which causes delay; provided, however, that any lack of funds shall not be deemed to be a condition beyond the control of Borrower except to the extent same is due to a default by Lenders in advancing funds pursuant to the terms of this Agreement; and further provided, however, that any breach by General Contractor, Provider or Proton Equipment Vendor under the General Contractor’s Agreement, the Facility Lease or the Proton Equipment Vendor Documents, respectively, shall not be deemed to be a Force Majeure Event.

“General Contractor’s Agreement” means that certain Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee with an Option for a Guaranteed Maximum Price, dated October 15, 2009, between Borrower as Owner and General Contractor, as amended and modified by that certain Standard Form of General Conditions of Contract Between Owner and Design-Builder, Change Order No. 01 dated July 28, 2010, Change Order No. 02 dated July 28, 2010; Change Order No. 03 dated December 7, 2010 and Guaranteed Maximum Price dated December 7, 2010.

“General Contractor” has the meaning set forth in Section 1.1.5.

“Governmental Account Debtor” means any Account Debtor which is (a) the United States of America acting under the Medicare program established pursuant to the Social Security Act or any other program established by federal law requiring that payments for Medical Services be made to the providers or suppliers of such services (including, without limitation, CHAMPUS as set forth in Title 10 U.S.C. Section 1071 et seq.), (b) any state or the District of Columbia responsible for administering such state’s (or district’s) Medicaid program adopted pursuant to Title XIX of the Social Security Act or (c) any agent, carrier, administrator or intermediary for any of the foregoing.

“Governmental Health Program” means (a) any plan or program that provides health benefits (including mental health benefits), whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government, including Medicare and the health benefits plans and programs of the Department of Defense (but excluding the federal employee health insurance program established under chapter 89 of title 5 of the United States Code); (b) any plan or program of a state receiving federal funds pursuant to subchapter V (pertaining to maternal and child health services), XIX (Medicaid), XX
“Governmental Authority” means any federal, state, county or municipal government, or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality, or public body, or any court, administrative tribunal, or public utility.

“Government Contract” has the meaning set forth in Section 5.1.5(h).

“Ground Lease” has the meaning set forth in Section 1.1.3.

“Ground Sublease” has the meaning set forth in Section 1.1.3.

“Guarantor” has the meaning set forth in Section 1.1.1.

“Guaranty” means, individually, each guaranty signed by Guarantor in favor of Agent, for the benefit of Lenders, and, collectively, all such guaranties.

“Hazardous Substances” means and includes, without limitation: any substance, chemical, material or waste (including, without limitation, any waste, substance, or material (solid, liquid, or gaseous) generated, produced, or resulting from the diagnosis, treatment, or immunization of human beings, or any research pertaining thereto, or the production or testing of biological agents) (A) the presence of which causes a nuisance or trespass of any kind under any applicable Environmental Law, (B) which is regulated by any Governmental Authority or is likely to create liability under any Environmental Law because of its toxic, flammable, corrosive, reactive, carcinogenic, mutagenic, infectious, radioactive, or other hazardous property or because of its effect on the environment, natural resources or human health and safety; including but not limited to, flammables and explosives, gasoline, petroleum and petroleum products, asbestos containing materials, polychlorinated biphenyls, lead and lead-based paint, radon, radioactive materials, microbial matter, biological toxins, mylotoxins, mold or mold spores or any hazardous or toxic material, substance or waste which is defined by those or similar terms or is regulated as such by any Governmental Authority, or (C) which is designated, classified, or regulated as being a hazardous or toxic substance, material, pollutant, waste (or a similar such designation) under any federal, state or local law, regulation or ordinance, including under any Environmental Law.

“Healthcare Laws” has the meaning set forth in Section 4.1.5(b).

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

“HIPAA Compliance Date” has the meaning set forth in Section 4.1.5(e).
“HIPAA Compliance Plan” has the meaning set forth in Section 4.1.5(e).

“HIPAA Compliant” has the meaning set forth in Section 4.1.5(e).

“Holdback” and “Holdbacks” have the meanings set forth in Section 1.1.4.

“Impositions” means all general and special taxes and assessments imposed on the Property and/or the Project, including personal property taxes, water charges, sewer charges and all other charges against the Property and/or the Project of any nature whatsoever; provided that if said taxes, assessments or other charges exclude the Improvements or any part thereof now constructed or to be constructed, then Agent’s reasonable estimate as to the amount of taxes, assessments and charges to be levied and assessed on all of the Improvements shall be used to determine the amount of Impositions. If any such general or special taxes or assessments shall be levied, charged, assessed or imposed upon or for the Property and/or the Project, or any portion thereof, and if such taxes or assessments shall also be a levy, charge, assessment or imposition upon or for any other premises, then the amount of Impositions shall be based upon the entire amount of such taxes or assessments, and Borrower shall not have the right to apportion the amount of any such taxes or assessments for the purposes of such computation. Notwithstanding the foregoing, “Impositions” shall not include any taxes, assessments or charges relating to the Facility that are the obligation of Provider under the Facility Lease.

“Improvements” means, from time to time, all buildings, parking lots, fixtures (including, without limitation, the Proton System) and other structures attached to or located upon the Land.

“In Balance” means no Deficiency then exists.

“Indebtedness” means all obligations of Borrower to Agent and Lenders from time to time for the payment of money, including without limitation, the principal amount of the Loan outstanding from time to time, all Accrued Interest, the Exit Fee, the Minimum Interest Lookback Amount, the Amortization Conversion Fee and all Charges and all amounts expended by Agent or any Lender or on its behalf which Borrower is obligated to reimburse, including interest, as provided in the Loan Documents.

“Individual Loan Commitment” means, with respect to each Lender, the amount set forth below opposite the name of such Lender (subject to change in accordance with the terms of this Agreement):

<table>
<thead>
<tr>
<th>Lender</th>
<th>Individual Loan Commitment</th>
</tr>
</thead>
<tbody>
<tr>
<td>ORIX Capital Markets, LLC</td>
<td>$ 50,000,000</td>
</tr>
<tr>
<td>Varian Medical Systems International AG</td>
<td>$115,300,000</td>
</tr>
</tbody>
</table>

“Initial Disbursement” has the meaning set forth in Section 1.1.4.

“Insolvency Laws” means the federal Bankruptcy Code, or any similar federal or state insolvency laws, governing any reorganization, arrangement, composition, readjustment,
liquidation, dissolution, or the appointment of a receiver or similar administrator for the protection of creditors.

“Insolvency Proceeding” means the filing or pendency of any voluntary or involuntary petition or proceeding under any Insolvency Laws.

“Insurer” means a Person that insures a Patient against certain of the costs incurred in the receipt by such Patient of Medical Services, or that has an agreement with any Borrower Party or Provider to compensate such Borrower Party or Provider for providing goods or services to a Patient.

“Interest” means interest on the Indebtedness at the Interest Rate or the Default Rate, as applicable.

“Interest Holdback” has the meaning set forth in Section 1.1.4.

“Interest Rate” has the meaning set forth in Section 1.1.4.

“Joint Operating Committee” has the meaning given to that term in the Facility Lease.

“Land” has the meaning set forth in Section 1.1.3.

“Lease” means the Facility Lease and any other oral or written lease and any other occupancy arrangement, possessory license or other agreement demising or otherwise granting possessory rights, to any party of all or any party of the Property, excluding, however, the Ground Lease and the Ground Sublease.

“Legal Limits” means the limits imposed on Agent’s or Lenders’ ability to accept payments of interest, fees or other charges in connection with the Loan, under Applicable Laws, including without limitation, usury laws.

“Lender” and “Lenders” have the respective meanings set forth in Section 1.1.2 of this Agreement, and shall include the successors and assigns of each owner of the Loan Documents from time to time.

“Lender Reply Period” has the meaning set forth in Section 9.16.

“Lenders’ Counsel” has the meaning set forth in Section 1.1.2.

“Lenders’ Counsel’s Address” has the meaning set forth in Section 1.1.2.

“LIBOR” means the rate published each Business Day in The Wall Street Journal for notes maturing thirty (30) days after issuance under the caption “Money Rates, London Interbank Offered Rates (Libor).”

“Licenses” means the Proton System Approvals and all other certifications, permits, licenses, approvals, registrations, authorizations, accreditations, consents, certificates of
needs, regulatory approvals, privileges, and franchises from all applicable Governmental Authorities.

“**Lien**” means any security interest, encumbrance, mortgage or lien, whether consensual or created by law, whether statutory or common law, (including tax liens, mechanics’ or materialmens’ liens and environmental liens) which encumbers the Collateral or any portion thereof.

“**Loan**” means the loan made pursuant to this Agreement.

“**Loan Amount**” has the meaning set forth in Section 1.1.4.

“**Loan Budget**” has the meaning set forth in Section 1.1.4.

“**Loan Documents**” means, collectively, this Agreement, the Notes, the Mortgage, the Guaranty, the Environmental Indemnity, the Multi-Party Agreement and any other documents, agreements, certificates or instruments evidencing or securing or which guaranty the Obligations or executed in connection with the Loan whether on or about the Closing Date or thereafter, and any modifications, renewals or extensions thereof.

“**Loan Transfer**” means any transfer or assignment by a Lender of its Pro Rata Share of the Loan or any partial interest therein, the Loan Documents or, with respect to Agent, the servicing rights with respect to the Loan.

“**Loss Recoveries**” means all proceeds of insurance paid or payable to Borrower arising out of any loss, damage or casualty affecting the Property and all awards, damages and payments paid or payable to Borrower arising out of any actual or threatened condemnation or eminent domain proceeding affecting the Property or any portion of the Property.

“**Major Decisions**” has the meaning set forth in Section 9.16.

“**Manager Event of Default**” has the meaning given to that term in the Facility Lease.

“**Marketing Reserve**” means a reserve account established by and under the control of Agent for the payment of costs and expenses to be incurred by Borrower in connection with the marketing, advertising and promotion of the Facility.

“**Marketing Reserve Amount**” means $0 annually or such other amount reasonably estimated by Agent in its sole discretion for the payment of costs and expenses to be incurred by Borrower in connection with the marketing, advertising and promotion of the Facility.

“**Material Agreement**” means each Construction Contract, the Facility Lease, the Proton Equipment Vendor Documents, the Ground Lease, the Ground Sublease, the Second Lien Security Agreement, the Multi-Party Agreement and any other agreement to which Borrower is a party and which is not terminable at the option of Borrower upon 30 days notice (or less) without the payment of any fee, liability or penalty.
“Material Adverse Effect” means that the matter in question could reasonably be anticipated to materially and adversely affect (a) a party’s ability to perform its obligations under any of the Loan Documents, including the ability to Complete any Construction Project, (b) Borrower’s ability to operate the Property in conformance with the then current Operating Budget, (c) the value, cash flow or marketability of the Collateral, either presently or as contemplated to be operated, constructed, used, leased or configured pursuant to the then current business plan of Borrower as approved by Agent, (d) enforceability of any Loan Document or the perfection or priority of any lien created under any Loan Document, or (e) the business operations, economic performance, assets or condition (financial or otherwise) of Borrower, Guarantor or the Facility.

“Maturity Date” has the meaning set forth in Section 1.1.4.

“Medicaid” means, collectively, the health care assistance program established by Title XIX of the Social Security Act (42 U.S.C. §§ 1396 et seq.) and any statutes succeeding thereto, and all laws, rules, regulations, manuals, orders, guidelines or requirements pertaining to such program including (a) all federal statutes (whether set forth in Title XIX of the Social Security Act or elsewhere) affecting such program; (b) all applicable state statutes and plans for medical assistance enacted in connection with such program and federal rules and regulations promulgated in connection with such program; and (c) all applicable provisions of all rules, regulations, manuals, orders and administrative and reimbursement guidelines and requirements of all government authorities promulgated in connection with such program (whether or not having the force of law), in each case as the same may be amended, supplemented or otherwise modified from time to time.

“Medical Services” means medical and health care services provided to a Patient, including, but not limited to, medical and health care services provided to a Patient which are covered by a policy of insurance issued by an Insurer, and includes physician services, nurse and therapist services, dental services, hospital services, skilled nursing facility services, comprehensive outpatient rehabilitation services, home health care services, residential and out-patient behavioral healthcare services, and medicine or health care equipment provided to a Patient for a necessary or specifically requested valid and proper medical or health purpose.

“Medicare” means, collectively, the health insurance program for the aged and disabled established by Title XVIII of the Social Security Act (42 U.S.C. §§ 1395 et seq.) and any statutes succeeding thereto, and all laws, rules, regulations, manuals, orders or guidelines pertaining to such program including (a) all federal statutes (whether set forth in Title XVIII of the Social Security Act or elsewhere) affecting such program; and (b) all applicable provisions of all rules, regulations, manuals, orders and administrative and reimbursement guidelines and requirements of all governmental authorities promulgated in connection with such program (whether or not having the force of law), in each case as the same may be amended, supplemented or otherwise modified from time to time.

“Minimum Amortization Payment” has the meaning set forth in Section 1.1.4.

“Minimum Working Capital Amount” means the Minimum Working Capital Amount as that term is defined in the Facility Lease and subject to adjustment pursuant to the
Facility Lease. Notwithstanding the foregoing, if at any time Agent reasonably believes that the Minimum Working Capital Amount in the next succeeding calendar year will be greater than the Minimum Working Capital Amount in the current calendar year, the term “Minimum Working Capital Amount” shall mean, effective upon Agent’s notice to Borrower, Agent’s estimate of the next succeeding calendar year’s Minimum Working Capital Amount; provided that upon the determination of the Minimum Working Capital Amount for the next succeeding calendar year in accordance with the Facility Lease, the term “Minimum Working Capital Amount” shall mean the amount so determined in accordance with the Facility Lease (subject to further adjustment by Agent in accordance with this sentence).

“Monthly Cash Flow Amount” means, for any calendar month in question and on a cash basis, the amount of Revenues which constitute only operating cash flow (i.e., excluding such items as Loan disbursements, Loss Recoveries, forfeited security deposits, lease termination fees and other Revenues required to be deposited with Agent or applied to the principal balance of the Loan) generated from all sources and activities with respect to the Property and the Project, reduced only by that amount of money expended to pay Eligible Expenses, the Monthly Insurance Deposit and the Monthly Tax Deposit. If the Property and the Project do not generate income or other operating cash flow, then the Monthly Cash Flow Amount shall be zero.

“Monthly Insurance Deposit” means an amount equal to the total annual Premiums that will next become due and payable as estimated by Agent from time to time, and at any time, less any amount then held by Agent for the payment of such Premiums, then divided by the number of months to elapse prior to the date when such total annual Premiums become due and payable. Agent’s determination of the Monthly Insurance Deposit shall be binding and conclusive.

“Monthly Interest Deficiency” means the excess of Accrued Interest for any calendar month over the Monthly Cash Flow Amount for such month.

“Monthly O&M Deposit” means an amount equal to the Support Services Fees and all other amounts payable by Borrower pursuant to the O&M Agreement that will next become due and payable from time to time, less any amount then held by Agent in the O&M Reserve, then divided by the number of months to elapse prior to the date when such Support Services Fees and other amounts become due and payable. Agent’s determination of the Monthly O&M Deposit shall be binding and conclusive.

“Monthly Tax Deposit” means one-twelfth (1/12th) of the amount of the total annual Impositions applicable to the Property, provided that if the total annual Impositions have not yet been finally determined, then the Monthly Tax Deposit shall be based on Agent’s estimate of such total from time to time, and at any time, plus, if requested by Agent the amount of money which, together with the aggregate of the monthly deposits to be made as of one month prior to the date on which the next installment of Impositions becomes due, shall be sufficient to pay in full such installment, as determined by Agent. Agent’s determination of the Monthly Tax Deposit shall be binding and conclusive.
“Mortgage” means, collectively, all mortgages, deeds of trust, deeds to secure debt or similar instruments made by Borrower in favor of Agent for the benefit of Lenders, which encumbers the Land and Improvements, and Borrower’s leasehold interest in the Land pursuant to the Ground Sublease, as security for the Indebtedness.

“Multi-Party Agreement” means that certain Multi-Party Agreement by and among Provider, Borrower, Agent and Ground Lessee dated as of the date hereof.

“Net Operating Income” means annualized Revenues of the Property generated from the Leases as of the date of determination, excluding, however, Revenues in respect of Leases that are sixty (60) days or more in arrears, Leases that are otherwise expiring within sixty (60) days following the date of determination or Leases in which there then exists an uncured default, less annualized operating expenses of the Property (such operating expenses shall include all rent and other sums paid by Borrower under the terms of the Ground Sublease, but shall exclude expenses relating to the Facility that are the obligation of Provider under the Facility Lease) as of the date of determination, each as determined by Agent.

“Non-Delinquent Lender” means each Lender other than the Delinquent Lender(s).

“Non-Governmental Payor” has the meaning set forth in Section 4.1.5(d).

“Notes” means the promissory notes made by Borrower in the form of Exhibit E (one for each Lender in an amount equal to such Lender’s Individual Loan Commitment, payable for the account of such Lender), in an aggregate principal amount equal to the Loan Amount, as the same may hereafter be amended, modified, extended, severed, assigned, substituted, renewed or restated from time to time, including, without limitation, any substitute notes pursuant to Section 9.8(c) or 10.20 (each, a “Note”).

“Notices” means all communications, requests or notices required or appropriate to be given under this Agreement or any of the other Loan Documents.

“O&M Agreement” means that certain Proton System Operations and Maintenance Agreement dated as of June 29, 2011 between Borrower and the Proton Equipment Vendor.

“O&M Holdback” has the meaning set forth in Section 1.1.4.

“O&M Reserve” means a reserve account established by and under the control of Agent as additional security for the Indebtedness in accordance with Section 2.5.6.

“Obligations” means all or any payment or performance obligations of Borrower or Guarantor to Agent or Lenders under the Loan Documents.

“OFAC” means the Office of Foreign Asset Control of the United States Department of the Treasury.
“Operating Account” means the Operating Account as that term is defined in the Facility Lease, which shall be subject to and governed by a bank account control agreement among Borrower, Agent, Provider and the depository bank in form and substance satisfactory to Agent.

“Operating Agreement” means each Lease, each declaration of covenant, restrictions and/or conditions or other matters of title to which the Property is subject, and any other material agreement which affects the use, occupancy or operation of the Property and which is not terminable upon 30 days notice or less (without the payment of any fee, liability or penalty) and under the terms of which a Lien could be imposed upon the Property or a reversion of title could occur.

“Operating Budget” means the annual operating budget for the Property as approved by Agent in connection with approval of Borrower’s then current business plan as amended from time to time with the written approval of Agent.

“Operating Deficit Escrow Account” means the account to be established and maintained in accordance with Section 5.6 of the Facility Lease.

“Operating Deficit Escrow Funds” means the Operating Deficit Escrow Funds as that term is defined in the Facility Lease.

“Operating Deficit Holdback” has the meaning set forth in Section 1.1.4.

“Organizational Documents” means all of the documents creating or governing Borrower, including, without limitation, the SPE Agreement and Resolution, or, as applicable, an Authorizing Entity.

“ORIX” has the meaning set forth in Section 9.8(c).

“Participant” has the meaning set forth in Section 9.8.

“Participation” means any participation interest in the Loan.

“Patient” means any Person receiving Medical Services at the Facility and all Persons legally liable to pay for such Medical Services other than Insurers or Governmental Authorities.

“Payor” has the meaning set forth in Section 10.12.

“Permitted Exceptions” means all Liens and exceptions to title shown on Schedule B of the Title Policy (including, without limitation, the Ground Lease and Ground Sublease) and all Liens in favor of Agent.

“Permitted Indebtedness” means (i) obligations for lease payments for standard diagnostic equipment to be installed and used at the Facility not to exceed $3,100,000 and (ii) unsecured trade payables in the ordinary course of Borrower’s business which (1) do not exceed, at any time, $50,000 and (2) are paid within (30) days of the date incurred.
“Permitted Transfer” means (a) any absolute Transfer (as opposed to a Transfer for collateral purposes) of direct or indirect ownership interests in Class A Membership Interests (as defined in the Organizational Documents) of Borrower to Affiliates of Borrower, family members of the owners (as of the Closing Date) of direct or indirect ownership interests in Borrower (or trusts maintained for the benefit of such persons), and (b) any sale, conveyance or assignment of direct or indirect ownership interests in Class A Membership Interests of Borrower among the owners of such ownership interests (as of the Closing Date); provided that in the case of Transfers described in clauses (a) and (b), above, (i) after giving effect to such Transfer, Sponsor shall continue to own all of its Class B Membership Interests (as defined in the Organizational Documents) that it owned as of the Closing Date and Sponsor shall be Controlled and owned by Guarantor or entities wholly owned by Guarantor in the same percentages as of the Closing Date, (ii) the constituent members of the Board of Managers shall be unchanged, (iii) any such transfers are made in strict accordance with the Organizational Documents, and (iv) Agent is provided with prior written notice of any such Transfer and evidence that the transferee is not a Prohibited Person.

“Person” means any individual, trustee under a trust agreement or declaration of trust, corporation, partnership, limited liability company, unincorporated organization, association or other legal entity.

“Personal Property” means all of Borrower’s personal property, fixtures, attachments and equipment located upon, attached to, used or required to be used in connection with the operation of the Property, including the following types of property, as defined in Article 9 of the Code: Accounts, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Electronic Chattel Paper, Equipment, General Intangibles, Goods, Instruments, Inventory, Investment Property, Letter of Credit Rights, and Supporting Obligations.

“Premiums” means the premium charges and all other related costs necessary to maintain in force all of the policies of insurance that Borrower is required to maintain pursuant to the Loan Documents, excluding, however, those premium charges and all other related costs that are the obligation of Provider under the Facility Lease.

“Pre-Opening Escrow Funds” means the Pre-Opening Escrow Funds as that term is defined in the Facility Lease.

“Pre-Opening Expense Holdback” has the meaning set forth in Section 1.1.4.

“Pre-Opening Expenses Escrow Account” means the account to be established and maintained in accordance with Section 5.9 of the Facility Lease.

“Preventive Maintenance Interruption Period” has the meaning given to that term in the O&M Agreement.

“Pro Rata Share” means, at any particular time with respect to each Lender, the ratio of such Lender’s outstanding Individual Loan Commitment to the Loan Amount, as adjusted from time to time to give effect to any applicable Assignment and Acceptance Agreement or the payment or reimbursement of any Delinquency Amount, in each case as determined by Agent. As of the date hereof, Lenders’ respective Pro Rata Shares are as follows:
“Prohibited Person” shall mean any Person:

(a) listed in the Annex to, or otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the “Executive Order”);

(b) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(c) with whom Agent or any Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;

(d) who commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order;

(e) that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf or at any replacement website or other replacement official publication of such list;

(f) subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder;

(g) who has been excluded from participation in a Governmental Health Program or has been convicted (as that term is defined in 42 C.F.R. §1001.2) of any of those offenses described in 42 U.S.C. §1320a-7b or 18 U.S.C. §§669, 1035, 1347, 1518; or

(h) who is an Affiliate of or affiliated with a Person listed above.

“Project” has the meaning set forth in Section 1.1.3.

“Project Budget” means a detailed budget, in form and substance satisfactory to Agent, specifying all Project Costs. Without limiting the foregoing, the Project Budget shall, if required by Agent, include as line items: the cost of architect’s, engineering and attorneys’ fees; advertising and promotion expenses; interest on the Loan; Impositions that may accrue and be payable during the term of the Loan as said term may be extended; survey costs; title insurance premiums; insurance or payment and performance bond, Premiums; fees of Agent’s consultants;
costs of utilities that may accrue and be payable during the term of the Loan as said term may be extended; any unpaid Loan expenses; and fees and costs associated with the procurement of all approvals, licenses and permits necessary to complete the Construction Work. The Project Budget is attached as Exhibit C to the Closing Certificate of Borrower.

“Project Costs” means all costs and expenses of every kind and nature whatsoever to be incurred by Borrower in connection with the Completion of all Construction Projects and the Facility, and fully equipping the Facility to enable the Provider Operations to be conducted therein, including such reserves and contingencies as Agent shall reasonably require.

“Project Working Capital Holdback” has the meaning set forth in Section 1.1.4.

“Project Yield” means the ratio, expressed as a percentage, of Net Operating Income to the outstanding principal balance of the Loan as of the date of determination.

“Property” means collectively, the Land, the Improvements, including any Improvements that are constructed after the Closing Date, all Personal Property, all Leases and appurtenances relating to any of the foregoing.

“Proton Equipment Vendor” has the meaning set forth in Section 1.1.5.

“Proton Equipment Vendor Documents” means the Proton System Purchase Agreement and the O&M Agreement.

“Proton System” has the meaning given to that term in the Proton Equipment Vendor Documents.

“Proton System Approvals” has the meaning set forth in Section 5.1.5.

“Proton System Purchase Agreement” means that certain Proton System Purchase Agreement dated as of April 29, 2010 between Borrower and the Proton Equipment Vendor.

“Provider” has the meaning set forth in Section 1.1.5.

“Provider Operations” means the Medical Services and ancillary services related to the delivery of treatment to Patients by the Proton System at the Facility, and such related services furnished to Patients at the Facility.

“Ramp-Up Period” the Ramp-Up Period as that term is defined in the Facility Lease.

“Rating Agency” means any statistical rating agency that has assigned, or has been requested to assign, a rating to any Securities.

“REO Agreement” has the meaning set forth in Section 10.3.

“REO Entity” has the meaning set forth in Section 10.3.
“REO Expenses” has the meaning set forth in Section 10.3.

“REO Revenue” has the meaning set forth in Section 10.3.

“Replacement Lender” has the meaning set forth in Section 10.20.

“Replacement Reserve” means a reserve account established by and under the control of Agent for the payment of costs and expenses to be incurred by Borrower in connection with anticipated capital improvements, repairs and replacements to be performed at the Property.

“Replacement Reserve Amount” means $15,525 annually or such other amount reasonably estimated by Agent in its sole discretion for the payment of costs and expenses to be incurred by Borrower in connection with anticipated capital improvements, repairs and replacements to be performed at the Property.

“Required Lenders” means, at any time, those Non-Delinquent Lenders holding at least seventy percent (70%) of that portion of the aggregate outstanding principal amount of the Notes held by the Non-Delinquent Lenders.

“Required Payment” has the meaning set forth in Section 10.12.

“Reserve” means either the Marketing Reserve, the Replacement Reserve, the Collateral Reserve or the O&M Reserve, as applicable.

“Revenue Sweep” shall mean those right and remedies of Borrower described in clause (ii) of the second grammatical paragraph of Section 15.1.9 of the Facility Lease.

“Revenues” means all rents, revenues and other income, from whatever source, including without limitation, lease termination fees, returns of deposits and any other ordinary or extraordinary revenues or income generated from or relating to the ownership, leasing, management, maintenance or operation of the Property which, in each case, Borrower receives or is entitled to receive (and which shall include all proceeds paid in connection with any rent loss and/or business interruption insurance maintained by or on behalf of Borrower and all sums Borrower receives in connection with that certain Agreement and Grant of Easements dated as of June 15, 2010 by and between H. G. Fenton Property Company and Borrower, as amended).

“RFE Readiness Document” has the meaning given to that term in the Proton System Purchase Agreement.

“Scheduled Payment Date” means the first Business Day after the fifteenth (15th) calendar day of each calendar month after the Closing Date, provided that if the Closing Date is not the first Business Day after the fifteenth (15th) calendar day of a calendar month, then the first Scheduled Payment Date shall be the first Business Day after the fifteenth (15th) calendar day of the second calendar month following the calendar month during which the Closing Date occurs.

“Second Lien Security Agreement” means that certain security agreement between Borrower and Proton Equipment Vendor granting a subordinated second lien security.
interest on the Proton System securing the purchase money owed from time to time from Borrower to Proton Equipment Vendor, which shall be expressly subordinate and junior to the Lien of the Mortgage and the Loan and shall be acceptable to Agent in its reasonable judgment.

“Securities” means any mortgage pass-through certificates or other securities issued, directly or indirectly, by Agent representing rights or interests in or with respect to the Loan.

“Single Purpose Entity” means an entity that, since the date of its formation and at all times on and after the date thereof, (i) exists solely for the purpose of owning and operating the Project, (ii) conducts business only in its own name, (iii) does not and will not engage in any business other than the ownership, management and operation of the Property, (iv) does not and will not hold, directly or indirectly, any ownership interest (legal or equitable) in any entity or any real or personal property other than the interest which it owns in the Property, (v) does not have any assets other than those related to its interest in the Property and does not have any debt other than as permitted by this Agreement and does not guarantee or otherwise obligate itself with respect to the debts of any person or entity, (vi) has its own separate books, records, accounts, financial statements and tax returns (with no commingling of funds or assets), (vii) holds itself out as being a company separate and apart from any other entity, (viii) observes limited liability company formalities, as the case may be, independent of any other entity, and (ix) complies with each and every covenant contained in Section 5.1.7.

“SPE Agreement and Resolution” means, collectively, (i) that certain Special Purpose Entity Provisions, Separateness Covenants and Related Obligations Agreement, dated effective September 30, 2011, and duly adopted, approved and confirmed by the Board of Managers of Borrower, and (ii) that certain Unanimous Written Consent of Board of Managers in Lieu of Special Meeting of Borrower, dated as of September 30, 2011, and duly adopted, approved and confirmed by the Board of Managers of Borrower.

“Special Representative” means a natural person who is employed by a Corporate Service Provider and for the five (5) year period prior to his or her appointment as Special Representative is not, directly or indirectly: (i) an employee, manager, stockholder, director, member, partner, officer, attorney or counsel of Borrower, any Authorizing Entity or any of their Affiliates (other than his or her service as a Special Representative or independent manager of Borrower), (ii) a creditor, customer of, or supplier or other Person who derives any of its purchases or revenues from its activities with the Company or any of its members or Affiliates (other than his or her service as a Special Representative or independent manager if such Person has been provided by a nationally-recognized company that provides professional independent managers), (iii) a Person controlling or under common control with any such employee, manager, stockholder, director, member, partner, officer, attorney, counsel, customer, supplier or other Person, or (iv) any member of the immediate family (including grandchildren or siblings) of a person described in clauses (i), (ii) or (iii) immediately above. A natural person who otherwise satisfies the foregoing definition shall not be disqualified from serving as a Special Representative of Borrower because such person is an independent manager of a “Special Purpose Bankruptcy Remote Entity” affiliated with Borrower that does not own a direct or indirect equity interest in Borrower if such individual is an independent manager provided by a nationally-recognized company that provides professional independent managers.
“Sponsor” means Advanced Particle Therapy LLC, a Nevada limited liability company.

“Stored Materials” has the meaning set forth in Section 3.2.2(q).

“Subaccount” and “Subaccounts” have the meaning set forth in Section 2.5.2.

“Subject Persons” has the meaning set forth in Section 4.1.5(b).

“Subsidiary” means, with respect to a Person, any entity of which such Person would be the direct or indirect parent entity.

“Substantial Completion” has the meaning given to that term in the General Contractor’s Agreement.

“Substantially Complete” has the meaning given to that term in the Facility Lease.

“Support Services Fees” has the meaning given to that term in the O&M Agreement.

“Support Service Start Date” has the meaning given to that term in the O&M Agreement.

“Survey” means a land title survey of the Land and the Improvements prepared by a licensed surveyor and certified to Agent in the form required by Agent as complying with then current ALTA/ACSM standards with such Table A items as Agent shall designate.

“System Exception Event” has the meaning given to that term in the O&M Agreement.

“Title Company” has the meaning set forth in Section 1.1.3.

“Title Policy” means the loan policy of title insurance issued by the Title Company to Agent in form and substance approved and accepted by Agent on the Closing Date which, among other things, insures the lien of the Mortgage as a first priority mortgage lien against the fee simple title to the Land and Borrower’s leasehold interest in the Land pursuant to the Ground Sublease.

“Transfer” means any sale, transfer, lease, conveyance, alienation, pledge, assignment, mortgage, encumbrance, hypothecation or other disposition of (a) all or any portion of the Property or any portion of any other Collateral, (b) all or any portion of Borrower’s right, title and interest (legal or equitable) in and to the Property or any portion of any other Collateral, or (c) any direct or indirect interest in Borrower or any interest in any Authorizing Entity.

“Transfer Notice” has the meaning set forth in Section 9.8(c).

“Varian” has the meaning set forth in Section 9.8(c).
“Working Capital Escrow Account” means the account to be established and maintained in accordance with Section 5.7 of the Facility Lease.

“Working Capital Holdback” has the meaning set forth in Section 1.1.4.
EXHIBIT A

Legal Description

Parcel A:

Parcel B:

APN: 809-333-77-40
None.
EXHIBIT C

Material Agreements


2. Lease and Management Services Agreement by and between California Proton Treatment Center, LLC, as lessor, and Scripps Clinic Medical Group, Inc., as lessee, dated as of June 11, 2010.

3. Ground Lease by and between California Proton Treatment Center, LLC, as lessor, and ORIX Proton San Diego, LLC, as lessee, dated as of September 30, 2011.

4. Ground Sublease by and between ORIX Proton San Diego, LLC, as sublessor, and California Proton Treatment Center, LLC, as sublessee, dated as of September 30, 2011.

5. Proton System Purchase Agreement dated as of April 29, 2010 between California Proton Treatment Center, LLC and Varian Medical Systems, Inc.

6. Proton System Operations and Maintenance Agreement dated as of June 29, 2011 between California Proton Treatment Center, LLC and Varian Medical Systems, Inc.

7. Second Lien Security Agreement dated as of September 30, 2011 by and between California Proton Treatment Center, LLC and Varian Medical Systems, Inc.

8. Multi-Party Agreement dated as of September 30, 2011 by and among California Proton Treatment Center, LLC, Scripps Clinic Medical Group, Inc., ORIX Proton San Diego, LLC and ORIX Capital Markets, LLC.

9. Amended and Restated Project Development and Management Services Agreement [undated] by and between Advanced Particle Therapy LLC and California Proton Treatment Center, LLC.

10. Development Agreement dated November 1, 2009 by and between Signet Development, Ltd. and California Proton Treatment Center, LLC.
None.
NOTE

THIS NOTE (the “Note”), dated ______________, 20__, is made and executed by CALIFORNIA PROTON TREATMENT CENTER, LLC, a Delaware limited liability company (“Borrower”) to the order of [NAME OF LENDER] and its successors or assigns (collectively, “Lender”), at the principal office of [NAME OF AGENT] located at ____________________ (“Agent”) for the account of Lender, pursuant to a certain Loan and Security Agreement (dated September 30, 2011) among Borrower and the lenders named therein (including Lender), as Lenders, and Agent, as agent for Lenders (the “Loan Agreement”). This Note is one of the Notes referred to in, and is entitled to the benefits of, the Loan Agreement, which among other things provides for the acceleration of the maturity hereof upon the occurrence of certain events and for prepayments in certain circumstances and upon certain terms and conditions. All of the terms, conditions and provisions of the Loan Agreement are hereby incorporated by reference. Capitalized terms used in this Note and not defined in this Note shall have the meanings given to them in the Loan Agreement.

I

PAYMENT TERMS

1.1 The Promise to Pay. For value received, including without limitation, the Loan made by Lender to Borrower pursuant to the Loan Agreement, Borrower hereby promises to pay to the order of Lender the principal amount of $______________, or so much thereof as may be advanced under the Loan Agreement, together with interest accrued on the principal amount from time to time outstanding at the Interest Rate set forth in the Loan Agreement plus Lender’s Pro Rata Share of the Exit Fee, the Amortization Conversion Fee (if not yet paid) and the Minimum Interest Lookback Amount (if any). Payments of interest and principal under this Note shall be in lawful money of the United States of America and shall be due on each Scheduled Payment Date in the amount or amounts provided under the Loan Agreement and the entire principal balance of the Loan, all Accrued Interest and Lender’s Pro Rata Share of the Exit Fee, the Amortization Conversion Fee (if not yet paid) and the Minimum Interest Lookback Amount (if any) and all other Indebtedness, shall be due and payable on the Maturity Date.

1.2 Payment Terms. Borrower’s rights and obligations regarding prepayments, late payments and the timing, place and manner of payments are governed by certain provisions of the Loan Agreement and, without limiting Section 2.10 hereof, all such provisions of the Loan Agreement are hereby incorporated into this Note by this reference.

1.3 Application of Payment. All payments shall be applied to the Indebtedness in such order and manner as is provided under the Loan Agreement. Interest on the principal balance of the Loan outstanding from time to time shall accrue from the date of disbursement by Lender and shall be computed on the basis of a three hundred sixty (360) day year and charged for the actual number of days elapsed. Without limiting Section 2.10 hereof, the provisions of the Loan Agreement regarding the determination and calculation of the amount

Exhibit E-1
II

ADDITIONAL COVENANTS

2.1 Acceleration. If (a) an Event of Default occurs or (b) the right to enforce the Mortgage shall accrue to the holder thereof, whether or not foreclosure proceedings have been commenced, then, at the election of the holder of this Note and without notice, the unpaid principal sum of this Note, together with accrued interest thereon, additional interest, if any, and all other fees and charges payable under the Loan Documents shall at once become immediately due and payable.

2.2 Default Interest. Following the occurrence of an Event of Default, the unpaid principal balance of the Loan shall bear interest at the Default Rate.

2.3 Waivers. Borrower and any other parties hereafter liable for the debt (including, without restricting the foregoing, any endorsers, sureties and guarantors) represented by this Note, hereby (a) waive presentment and demand for payment, notice of dishonor, protest and notice of protest and/or nonpayment, notice of intention to accelerate and all other notices other than those specifically required by the Loan Documents and (b) agree that the time of payment of that debt or any part thereof may be extended from time to time without modifying or releasing the lien of the Loan Documents or the liability of Borrower or any such other parties, the right of recourse against any such parties being hereby reserved by the holder hereof. No release of any security for the Indebtedness or extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note, the Loan Agreement or the other Loan Documents made by agreement between Lender or any other person or entity shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower, or of any other person or entity who may become liable for the payment of all or any part of the Indebtedness under this Note, the Loan Agreement or the other Loan Documents. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Agent or Lender to take further action without further notice or demand as provided for in this Note, the Loan Agreement or the other Loan Documents. If Borrower is a partnership, the agreements herein contained shall remain in force and applicable, notwithstanding any changes in the individuals comprising the partnership, and the term “Borrower,” as used herein, shall include any alternate or successor partnership, but any predecessor partnership and their general partners shall not thereby be released from any liability. If Borrower is a limited liability company, the agreements herein contained shall remain in force and applicable, notwithstanding any changes in the members comprising the company, and the term “Borrower,” as used herein, shall include any alternate or successor company, but any predecessor company shall not thereby be released from any liability. If Borrower is a corporation, the agreements contained herein shall remain in full force and applicable notwithstanding any changes in the shareholders comprising, or the officers and directors relating to, the corporation, and the term “Borrower” as used herein, shall include any alternative or successor corporation, but any predecessor corporation shall not be relieved of liability hereunder. Nothing contained in this grammatical paragraph is intended to or shall be construed as a consent to, or a waiver of, any prohibition or restriction on transfers of interests in such

Exhibit E-2
2.4 **Collection.** In the event of a default in the payment of any amount due hereunder, the holder hereof may exercise any remedy or remedies, in any combination whatsoever, available by operation of law or under any instrument given as security for this Note and such holder shall be entitled to collect its reasonable costs of collection, including attorneys’ fees, which shall be additional Indebtedness. For purposes of the preceding sentence, Agent’s and Lender’s attorneys’ fees shall be deemed to include compensation to staff counsel, if any, of Agent or Lender in addition to the fees of any other attorneys engaged by Agent or Lender. Agent or Lender may, and Borrower hereby authorizes Agent and Lender to, charge any account of Borrower held by Agent or Lender and apply any and all balances, credits, deposits, accounts, monies, reserves, certificates of deposit, cash equivalents and other assets of or in the name of Borrower held by Agent or Lender to the Indebtedness evidenced hereby, and Agent and Lender may pursue all its rights and remedies against Borrower under the Loan Documents.

2.6 **Severability.** If any term, restriction or covenant of this instrument is deemed illegal or unenforceable, all other terms, restrictions and covenants and the application thereof to all persons and circumstances subject hereto shall remain unaffected to the extent permitted by law; and if any application of any term, restriction or covenant to any person or circumstance is deemed illegal, the application of such term, restriction or covenant to other persons and circumstances shall remain unaffected to the extent permitted by law.

2.7 **Notices.** All notices, requests, reports, demands or other instruments required or contemplated to be given or furnished under this Note to Borrower or Agent shall be directed to Borrower or Agent as the case may be at their respective address as set forth in the Loan Agreement. Notices shall be delivered in accordance with the methods for the giving of notices that are provided under the Loan Agreement.

2.8 **WAIVER OF JURY TRIAL.** BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THERewith. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY, INTENTIONALLY AND VOLUNTARILy MADE BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH Issue AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. BORROWER ACKNOWLEDGES THAT NEITHER AGENT, LENDER NOR ANY PERSON ACTING ON BEHALF OF EITHER OF THEM HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR HAS TAKEN ANY ACTIONS WHICH IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. AGENT IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER. BORROWER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR LENDER TO ENTER INTO A BUSINESS RELATIONSHIP, THAT AGENT AND LENDER HAVE ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THE LOAN DOCUMENTS AND THAT AGENT AND LENDER WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. BORROWER FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS NOTE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL.

2.9 **CONSENT TO JURISDICTION.** BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF DALLAS, STATE OF TEXAS AND UNCONDITIONALLY AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS NOTE OR THE OTHER

Exhibit E-4
2.10 **Loan Documents.** The obligations evidenced by this Note are secured by Liens in favor of Lender granted by Borrower. All terms, covenants and conditions contained in the Loan Documents are hereby incorporated herein by reference. In the event of any conflict or inconsistency between the terms of this Note and the terms of the Loan Agreement, the terms of the Loan Agreement shall govern and control.

2.11 **No Modification, Waiver.** No modification, waiver, amendment, discharge or change of this Note shall be valid unless the same is in writing and signed by Borrower and Lender.

2.12 **Joint and Several Obligations.** The obligations evidenced hereby shall be the joint and several obligations of all signatories or makers of this Note.

2.13 **Transfer of Note.** Upon the transfer of this Note, Borrower hereby waiving notice of any such transfer except to the extent expressly provided in the Loan Agreement, Lender may deliver all the collateral mortgaged, granted, pledged or assigned pursuant to the Loan Documents, or any part thereof, to the transferee who shall thereupon become vested with all the rights herein or under applicable law given to Lender with respect thereto, and Lender shall from that date forward forever be relieved and fully discharged from any liability or responsibility in the matter, but Lender shall retain all rights hereby given to it with respect to any liabilities and the collateral not so transferred.

[The balance of this page is blank; signature page follows.]

Exhibit E-5
IN WITNESS WHEREOF, the undersigned has executed this Note as of the date first above written.

BORROWER

CALIFORNIA PROTON TREATMENT CENTER, LLC, a Delaware limited liability company

By: ________________________________
Print Name: ________________________________
Its: ________________________________

Exhibit E-6
EXHIBIT F
Form of Assignment and Acceptance Agreement

THIS ASSIGNMENT AND ACCEPTANCE AGREEMENT, dated as of (hereinafter referred to as this “Assignment Agreement”), is executed by and between (hereinafter referred to as the “Assignor”) and (hereinafter referred to as the “Assignee”).

PRELIMINARY STATEMENTS

WHEREAS, the Assignor in its capacity as a Lender is a party to that certain Loan and Security Agreement dated September 30, 2011, executed by and among California Proton Treatment Center, LLC, a Delaware limited liability company (hereinafter referred to as the “Borrower”), ORIX Capital Markets, LLC, a Delaware limited liability company, as the Agent for all of the Lenders thereto (hereinafter referred to as the “Agent”), and the Lenders identified therein (hereinafter each individually referred to as a “Lender” and hereinafter said Loan and Security Agreement, as it may be from time to time amended, modified, extended, renewed, substituted, and/or supplemented, shall be referred to as the “Loan Agreement”);

WHEREAS, defined terms used but not expressly defined herein shall have the same meanings when used herein as set forth in the Loan Agreement; and

WHEREAS, in accordance with Section 9.8 of the Loan Agreement, the Assignor wishes to sell, assign and transfer to the Assignee, and the Assignee wishes to purchase, accept and acquire from the Assignor, a portion, specified herein, of the Assignor’s Individual Loan Commitment, subject to and in accordance with all of the terms and conditions of this Assignment Agreement.

NOW THEREFORE, intending to be legally bound hereby, the parties hereto agree as follows:

Section 1. Assignment; Payments; The Notes.

(a) Subject to the terms and conditions hereof, the Assignor hereby irrevocably sells, assigns and transfers to the Assignee, without recourse, and the Assignee hereby purchases, takes and assumes from the Assignor all of the Assignor’s rights, title and interests in and to, together with all of the Assignor’s duties, liabilities and obligations in connection with: (i) that percentage (hereinafter referred to as the “Percentage”) identified on Exhibit “A” attached hereto, of the Assignor’s Individual Loan Commitment under the Loan Agreement and other Loan Documents; and (ii) an identical Percentage of all amounts under the Loan Agreement and the Notes owned by the Assignor as of the date hereof; and (iii) all guarantees thereof and collateral security therefore and all rights, duties, instruments and documents pertaining thereto and arising under or in connection with the Loan Agreement or the Loan Documents (hereinafter those obligations set forth in the foregoing Sections (i), (ii) and (iii) shall be collectively referred to as the

Exhibit F-1
“Assigned Obligations”). From and after the date hereof: (1) principal due on or after the date hereof that would otherwise be payable to the Assignor pursuant to its Notes shall be payable to the Assignee to the extent of the Assignee’s Percentage (as now reflected in the Assignor’s and the Assignee’s respective new Notes); (2) the Assignor and Assignee shall make all appropriate adjustments in payments for periods prior to the date hereof or with respect to the making of this Assignment Agreement, directly between themselves, it being understood that interest and fees with respect to the assigned obligations and accruing prior to the date hereof shall be the property of the Assignor, and interest and fees with respect to the assigned obligations and accruing on or after the date hereof shall be the property of the Assignee, and (3) with respect to the Assigned Obligations, the Assignee shall assume and perform all of the Assignor’s duties and liabilities under or in connection with the Loan Agreement, the Notes, and the other Loan Documents.

(b) In consideration of the transfer of the Assigned Obligations, the Assignee shall pay to the Assignor, concurrently with the execution of this Assignment Agreement, the purchase price (hereinafter referred to as the “Purchase Price”) listed on Exhibit “A” attached hereto representing the Assignee’s Percentage of the outstanding principal amount of the Assignor’s Notes. The Assignor and this Assignee shall make appropriate adjustments in payments of interest or fees for periods prior to the date hereof, it being understood that regardless of how or where received, interest accruing prior to the date hereof, and fees (including, without limitation, the Exit Fee, the Amortization Conversion Fee and the Minimum Lookback Amount) payable prior to the date hereof, with respect to the Assigned Obligations shall be the property of the Assignor, and interest accruing on or after the date hereof, and fees (including, without limitation, the Exit Fee, the Amortization Conversion Fee and the Minimum Lookback Amount) payable on or after the date hereof, with respect to the Assigned Obligations shall be the property of the Assignee.

Section 2. Mutual Representations and Warranties; Mutual Covenants.

(a) Each of the Assignor and the Assignee hereby represents and warrants to the other as follows: (i) it is duly organized and validly existing and has full power, authority and legal right to execute and deliver this Assignment Agreement and to perform the provisions of this Assignment Agreement on its part to be performed; (ii) the execution, delivery and performance of this Assignment Agreement have been duly authorized by all necessary corporate action; (iii) this Assignment Agreement is its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, subject to applicable bankruptcy, insolvency, reorganization, moratorium, and similar laws affecting the creditor’s rights generally, and subject, as to enforceability, to general principles of equity or at law; and (iv) no governmental or regulatory consents, or other official authorizations and approvals are required for the due execution, delivery and performance of this Assignment Agreement, and no action by, and no notice to or filing with, any governmental authority or regulatory body is required for such execution, delivery or performance.

(b) Each of the Assignor and the Assignee hereby agrees that at any time and from time to time upon the request of the other party, it will execute and deliver such further documents and do such further acts and things as such other party may reasonably request in order to effect the purposes of this Assignment Agreement.

Exhibit F-2
Section 3. Disclaimer.

Except as set forth below, the Assignor makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representation made in or in connection with the Loan Agreement, the Loan Documents or any document or any instrument related thereto or the execution, legality, validity, enforceability, genuineness or sufficiency of any such document and assumes no responsibility for the financial condition of the Borrower or any other party obligated with respect to the Loan Agreement or the Loan Documents or the Notes or the sufficiency or adequacy of any security therefor. The Assignor represents and warrants to the Assignee that the Assignor has good and valid title to the Assigned Obligations, free and clear of any liens, security interests and encumbrances.

Section 4. Acknowledgments and Agreements of the Assignee.

(a) The Assignee hereby acknowledges receipt of a conformed copy of the Loan Agreement and all the other Loan Documents and any other documents and instruments incorporated into any of the foregoing. The Assignee agrees to be bound by all of the terms and provisions of the Loan Agreement and the other Loan Documents (including, without limitation, the provisions of Section 9.8 of the Loan Agreement with respect to subsequent sale, assignment or participation of all or a portion of the Loans) as if an original Lender signatory or party thereto.

(b) The Assignee hereby expressly accepts this Assignment Agreement without recourse to the Assignor. The Assignee hereby confirms that it has made an independent credit investigation and appraisal of the Borrower and the Loan Facilities and the sufficiency of any Collateral for the Assigned Obligations on the basis of such information as the Assignee has deemed appropriate, has entered into this Assignment Agreement on the basis of such independent investigation and appraisal and has made and shall continue to make its own credit decisions with respect to the Assigned Obligations and the Loan Agreement and actions taken or not taken thereunder. The Assignee hereby expressly acknowledges that it is not relying upon any representation or warranty of the Assignor, express or implied relating to the validity, genuineness, enforceability, collectability or other status of the Assigned Obligations or the credit worthiness of the Borrower or any other Person obligated with respect to the Assigned Obligations under or in connection with the Loan Agreement and/or the Assignor’s Notes and the Loan Documents or the value of any security therefor. The Assignee hereby further acknowledges that the Assignor has made no assurances that the Assignor will not transfer all or any part of its remaining outstanding Individual Loan Commitment under the Loan Agreement, except that the Assignor shall be required to comply with the provisions of Section 9.8 of the Loan Agreement.

Section 5. Assignment.

Neither the Assignee nor the Assignor may assign any of its rights or obligations under this Assignment Agreement without the prior express written consent of the other party, such consent not to be unreasonably withheld or delayed.

Exhibit F-3
Section 6. Notices; Authorized Communications.

(a) All notices and other communications provided for in this Assignment Agreement shall be in writing, which may be by confirmed telecopier transmission and addressed as set forth below or to such other address or telecopier number as may from time to time be designated by the intended recipient thereof by notice to the other party. All such notices and other communications shall be hand-delivered, or mailed by airmail, postage prepaid, or telecopied, addressed as aforesaid, and shall be effective if hand-delivered, upon delivery, or if mailed, when received, or if telecopied, when transmitted.

(b) Each party hereto shall be authorized and entitled to rely upon any communication reasonably believed by such party to be signed, sent or made by a proper and duly authorized person.

Section 7. Amendment.

This Assignment Agreement may not be amended, supplemented or modified except in writing, signed by both the Assignee and the Assignor.

Section 8. Waiver.

No failure or delay on the part of either party in exercising any right hereunder shall operate as a waiver of, or impair such right. No single or partial exercise of any such right shall preclude any other further exercise thereof or the exercise of any other rights. No waiver of any such right shall be effective unless given in writing. No waiver of any such right shall be deemed a waiver of any other right hereunder.

Section 9. Entire Agreement.

This Assignment Agreement contains the entire agreement between the parties relating to the subject matter herein and supersedes all previous oral statements and other writings with respect thereto. The section headings used herein are intended for convenience only and shall not be deemed to control or effect any interpretation of any of the provisions hereof.

Section 10. Governing Law.

This Assignment Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Section 11. Counterparts.

This Assignment Agreement and any amendments, waivers, consents, or supplements may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

Exhibit F-4
IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by an authorized signatory and delivered as of the day and year first written above.

ASSIGNOR:

By: ____________________________
Name: __________________________
Title: __________________________

ASSIGNEE:

By: ____________________________
Name: __________________________
Title: __________________________

CONSENTED TO AND AGREED UPON THIS _____ DAY OF _____, 20 _____:

ORIX CAPITAL MARKETS, LLC, a Delaware limited liability company, as the Agent

By: ____________________________
Name: __________________________
Title: __________________________

Exhibit F-5
Borrower shall have the right to extend the Maturity Date (each, an “Extension Option”) for up to two (2) additional, consecutive twelve (12) month terms (each such 12-month period being hereinafter referred to as an “Extension Term”). Borrower may only exercise an Extension Option upon satisfying the following conditions:

(i) Borrower shall have delivered to Agent written notice of such election (the “Extension Notice”) no later than 120 days’ prior to then scheduled Maturity Date and failure to so deliver the Extension Notice constitutes Borrower’s waiver of its extension rights;

(ii) Each such Extension Notice shall be accompanied by a non-refundable extension fee equal to seventy five one-hundredths of one percent (0.75%) of the then outstanding principal balance of the Loan;

(iii) With respect to the first Extension Term (a) the Net Operating Income shall be equal to or greater than the product obtained by multiplying the Debt Service by two (2) and (b) the Project Yield shall be equal to or greater than twenty-five percent (25%);

(iv) With respect to the second Extension Term (a) the Net Operating Income shall be equal to or greater than the product obtained by multiplying the Debt Service by two (2) and (b) the Project Yield shall be equal to or greater than twenty-five percent (25%);

(v) No Event of Default shall have previously occurred or then exists under the Loan Documents, nor shall any Default or Cash Trap Event then exist.
Rider 10.1(b)  
Actions by Agent

Subject to the terms and provisions of this Agreement (but without limiting in any way the generality thereof), Agent shall have the right, and Lenders acknowledge that Agent, exclusively, has all necessary power and authority (but under no circumstances shall be obligated), to undertake any or all the following actions on behalf of Lenders:

(i) communicate and otherwise deal with Borrower and the other Borrower Parties in connection with or related to the Loan;

(ii) receive, process and review any and all requests (including requests for approval of or consent to an action or matter) submitted by any of the Borrower Parties under the Loan Documents or otherwise, and determine whether to approve or disapprove any such matter or action;

(iii) process and review any and all requests for Advances and disbursements under the Loan Documents (including Advances of the Holdbacks and/or the disbursement of Deposits), and determine whether Borrower has complied with and satisfied any and all conditions to such Advances and disbursements and when any such Advances or disbursements should be made;

(iv) prepare, negotiate, finalize and execute any and all notices, demands, default letters, amendments, modifications, waivers, workouts, releases, payoff letters, approvals, consents, disapprovals and other communications of, in connection with or with respect to the Loan and any of the Loan Documents;

(v) require and acquire additional security for the Loan from the Borrower Parties;

(vi) receive, hold and disburse all Revenue and Deposits;

(vii) vote all claims with respect to the Loan in any bankruptcy, insolvency or similar proceedings, whether voluntary or involuntary including the right to approve or reject any plan of reorganization;

(viii) take any legal action to enforce or protect Lenders’ interests with respect to the Loan or to exercise or refrain from exercising any powers or rights which Lenders may have under the Loan Documents, including, without limitation, the right at any time to accelerate, or refrain from accelerating, the Loan, to foreclose and sell and otherwise deal with the Collateral, or, refrain from foreclosing, selling or otherwise dealing with the Collateral, and to enforce or refrain from enforcing the Loan Documents;

(ix) approve or disapprove of Borrower’s Operating Budget with respect to the Collateral;
(x) approve or disapprove of the execution, renewal, termination or amendment of any lease;

(xi) approve or disapprove of the release of any escrow held in conjunction with the Loan to Borrower substantially in accordance with the terms of the Loan Documents or as otherwise required by applicable law;

(xii) approve or disapprove of any alterations to the Collateral or any Project, to the extent approval by Agent of such alterations is required by the Loan Documents;

(xiii) approve or disapprove of any change in any Loan Documents (other than Major Decisions);

(xiv) approve or disapprove of any change in the manager of all or any portion of the Collateral in accordance with the terms of the Loan Agreement;

(xv) waive any notice provisions related to prepayment; and

(xvi) exercise all such powers and take such actions as are incidental to any and all of the foregoing consistent with the terms and provisions of this Agreement.
THIS REVENUE SHARING AGREEMENT ("Agreement") is dated as of September 30, 2011, and made by and between ORIX PROTON SAN DIEGO, LLC, a Delaware limited liability company, its successors and assigns ("ORIX") and VARIAN MEDICAL SYSTEMS INTERNATIONAL AG, a Swiss corporation ("Varian").

RECITALS

A. ORIX Capital Markets, LLC, a Delaware limited liability company, in its capacity as administrative agent under the Loan (as defined below) ("Agent"), ORIX Capital Markets, LLC, a Delaware limited liability company, as a lender and not Agent ("OCM"), Varian, as a lender, and California Proton Treatment Center, LLC, a Delaware limited liability company ("Borrower") are parties to that certain Loan and Security Agreement of even date herewith (the "Loan Agreement"), pursuant to which the lenders party thereto from time to time have agreed to make a loan to Borrower in an amount not to exceed $165,300,000 (the "Loan"). The Loan is secured by, among other things, that certain real estate commonly known as 9730 Summers Ridge Road, San Diego, California (the "Property").

B. In consideration of OCM’s agreement to arrange the Loan to Borrower and to enter into the Loan Agreement, and as a requirement therefor, Borrower agreed to enter into a ground lease transaction with ORIX, an affiliate of OCM, as further set forth in these Recitals.

C. Borrower, as ground lessor, has entered into that certain Ground Lease dated as of September 30, 2011 (the "Ground Lease") with ORIX, as ground lessee, pursuant to which Borrower leases and demises all of its rights and interests in and to the Property.

D. ORIX, as ground sublessor, has entered into that certain Ground Sublease dated as of September 30, 2011 (the "Ground Sublease") with Borrower, as ground sublessee, pursuant to which ORIX leases and demises all of its rights and interests in and to the Property to Borrower. Pursuant to the terms of the Ground Sublease, Borrower shall make ground rent payments to ORIX equal to the Annual Rent and the Additional Rent, as those terms are defined and as more specifically set forth in the Ground Sublease. All capitalized terms not otherwise defined in this Agreement shall have the meanings given them in the Ground Sublease.

E. Pursuant to the Loan Agreement, OCM has the right, at any time and from time to time, to purchase or cause to be purchased all or a portion (whether advanced or not) of Varian’s Individual Loan Commitment (as defined in the Loan Agreement), in accordance with Section 9.8 of the Loan Agreement.

NOW THEREFORE, in consideration of the Recitals set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. ORIX shall, promptly after its actual receipt of any Annual Rent or any Additional Rent from Borrower (including receipt of any Annual Rent or Additional Rent and interest thereon that may have accrued pursuant to the Ground Sublease), pay to Varian an
amount equal to forty percent (40%) ("Varian’s Share") of all such Annual Rent or Additional Rent received by ORIX (each such payment to Varian is referred to herein as a “Revenue Payment”). ORIX shall deliver to Varian, simultaneously with each payment to Varian of a Revenue Payment, a copy of the most recent financial report delivered by Borrower to ORIX containing Borrower’s calculation of all Revenue and Priority Ground Rent for the month covered in such report and for the entire calendar year to date, or, if applicable, Borrower’s report containing Borrower’s calculation of the Additional Rent (and Varian acknowledges and agrees that ORIX makes no representation or warranty (implied, express or otherwise) as to the accuracy or completeness of all such financial reports and the data and calculations contained therein). All of Varian’s rights and benefits under this Agreement, including, without limitation, the right to receive Revenue Payments, are personal to Varian only, and no successor or assign of Varian or of any of Varian’s rights under the Loan shall have any right to receive any Revenue Payment or any other benefits arising under this Agreement, unless permitted pursuant to this Agreement.

2. If at any time and from time to time, but in any event on or prior to December 31, 2012 (the “Cut Off Date”), Varian receives one or more payments representing principal then outstanding on its Note(s) (as defined in the Loan Agreement), whether any such payments are made by Borrower, arise through OCM’s exercise of its purchase rights described in Section 9.8 of the Loan Agreement or are made from any other source or arise from any other event (or any combination of the foregoing), such that the outstanding principal balance owing to Varian has been reduced, in the aggregate, by at least $17,750,000, then Varian’s Share shall be reduced by one-quarter (1/4), and for each additional reduction, in the aggregate, of the outstanding principal balance then owing to Varian of at least $17,750,000, Varian’s Share shall be further reduced by one-quarter (1/4). For the avoidance of doubt, if at any time on or prior to the Cut Off Date Varian has received payments of principal, in the aggregate, of at least $35,500,000 (but less than $53,250,000), Varian’s Share shall be one-half (1/2) of 40% (i.e. 20%), and if at any time on or prior to the Cut Off Date Varian has received payments of principal, in the aggregate, of at least $71,000,000, Varian’s Share shall be zero.

The following table further illustrates the foregoing:

<table>
<thead>
<tr>
<th>Aggregate Payment of Principal Received by Varian (on or before the Cut Off Date):</th>
<th>Varian’s Share of Annual Rent:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $17,750,000</td>
<td>40%</td>
</tr>
<tr>
<td>At least $17,750,000, but less than $35,500,000</td>
<td>30%</td>
</tr>
<tr>
<td>At least $35,500,000, but less than $53,250,000</td>
<td>20%</td>
</tr>
<tr>
<td>At least $53,250,000, but less than $71,000,000</td>
<td>10%</td>
</tr>
<tr>
<td>$71,000,000 or greater</td>
<td>0%</td>
</tr>
</tbody>
</table>
3. If after the Cut Off Date, Varian’s Share has not been reduced to zero pursuant to Section 2 above, and Varian receives, at any time after the Cut Off Date, one or more payments representing principal then outstanding on its Note(s) arising through OCM’s exercise of its purchase rights described in Section 9.8 of the Loan Agreement or otherwise as a result of OCM’s activities, and the aggregate amount of any such payment or payments received by Varian after the Cut Off Date equals or exceeds one-half (1/2) (but less than all) of the positive difference obtained by subtracting (a) the aggregate amount of any payment or payments representing principal and received by Varian on or before the Cut Off Date from (b) $71,000,000 (such positive difference is referred to herein as the “Excess Balance”), then Varian’s Share then in effect shall be reduced by fifty percent (50%). Furthermore, if Varian shall receive after the Cut Off Date one or more payments representing principal which shall, when aggregated with all other payments representing principal received by Varian after the Cut Off Date, equal or exceed the Excess Balance, then Varian’s Share shall equal ten percent (10%); provided, however, that notwithstanding anything in this Section 3 to the contrary, in no event shall Varian’s receipt of one or more payment or payments representing principal after the Cut Off Date cause Varian’s Share to be reduced below ten percent (10%).

For illustration purposes only, assuming that the aggregate amount of payments representing principal and received by Varian on or before the Cut Off Date equals $21,000,000, then Varian’s Share as of the Cut Off Date would be 30% and the Excess Balance would equal $50,000,000. If the aggregate amount of payments representing principal and received by Varian after the Cut Off Date equals $30,000,000 Varian’s Share would then be reduced to 15%, and if the aggregate amount of payments representing principal and received by Varian after the Cut Off Date equals $50,000,000 or more, Varian’s Share would then be reduced to 10%.

4. Any reduction in Varian’s Share as described in Section 2 or 3 above shall be effective as of the date of Varian’s receipt of the last aggregate principal payment that results in such reduction (any such date is referred to herein as an “Effective Date”), and if any such reduction in Varian’s Share occurs on a day other than the first calendar day of a month, the Revenue Payment for any such month shall be the sum of $x$ and $y$, where $x$ equals the per diem amount of the Annual Rent received by ORIX for any such month (calculated using the actual number of calendar days in any such month) (the “Per Diem Amount”) multiplied by the number of days from the beginning of such month to the day immediately preceding the Effective Date, then such product multiplied by Varian’s Share (as in effect at the beginning of such month), and where $y$ equals the Per Diem Amount multiplied by the number of days from and including the Effective Date through the end of such month, then such product multiplied by Varian’s Share (as reduced as of the Effective Date).

5. Subject to the provisions of Sections 12 and 13, in the event ORIX sells all or any portion of its leasehold interest created by the Ground Lease or any interest in or right to receive the Annual Rent under the Ground Sublease such that ORIX will no longer receive all or any part of the Annual Rent from Borrower, ORIX shall pay to Varian Varian’s Share of the net sale proceeds received by ORIX in connection with any such sale, less ORIX’s reasonable costs and expenses incurred in connection with any such sale (a “Sale Payment”), promptly upon ORIX’s receipt of any such sale proceeds. Unless any such sale results in a termination of this Agreement in accordance with Section 6, no such sale shall otherwise affect ORIX’s obligations as set forth in this Agreement.
6. Upon the first to occur of (i) Varian’s Share having been reduced to zero, (ii) a sale of the entire leasehold interest created by the Ground Lease or all rights to receive the Annual Rent under the Ground Sublease, such that in either case ORIX no longer has any right to receive any Annual Rent from Borrower, or (iii) the expiration or termination of the Ground Sublease, and in any such event, upon Varian’s receipt of the Revenue Payment for the month in which any such event occurred (calculated as described in Section 4 above) and the Sale Payment (if applicable), this Agreement and all of ORIX’s and Varian’s rights and obligations with respect to the calculation, delivery, payment and receipt of the Revenue Payments and Sale Payments shall terminate, cease and be of no further force or effect.

7. Notwithstanding anything in this Agreement to the contrary, if at any time OCM exercises its purchase rights pursuant to the second paragraph of Section 9.8(c) of the Loan Agreement and Varian fails to execute and deliver the Assignment and Acceptance Agreement (as that term is defined in the Loan Agreement) as and when required in Section 9.8(c) of the Loan Agreement, then for all purposes of this Agreement and the determination of “Varian’s Share” as described herein, Varian shall be deemed to have received, on the last day by which Varian was required to execute and deliver any such Assignment and Acceptance Agreement, a payment in an amount equal to the amount set forth in the relevant Transfer Notice (as defined in the Loan Agreement) representing the amount of principal then outstanding on Varian’s Note (s) that Varian would have received if such Assignment and Acceptance Agreement had been executed as and when required under Section 9.8 of the Loan Agreement.

8. Each of ORIX and Varian are sophisticated parties and each of ORIX and Varian has not relied in entering into this Agreement upon any oral or written information, representation, warranty or covenant from the other, or any of the other’s representatives, employees, affiliates or agents. Each of ORIX and Varian further acknowledges that no employee, agent or representative of the other has been authorized to make, and that each of ORIX and Varian have not relied upon, any statements, representations, warranties or covenants other than those specifically contained in this Agreement. Without limiting the foregoing, each of ORIX and Varian acknowledges that the other has made no representations or warranties as to the Ground Lease, Ground Sublease, the Property, Borrower or Scripps (including, without limitation, the cash flow of the Property, the value, marketability, condition or future performance thereof, the existence, status, adequacy or sufficiency of the leases, the tenancies or occupancies of the Property, or the sufficiency of the cash flow of the Property to pay all amounts which may become due from time to time pursuant to the Ground Sublease or this Agreement). ORIX’s payment obligations as set forth in this Agreement shall be limited to the extent of ORIX’s actual receipt of Annual Rent from Borrower under the Ground Sublease and ORIX shall not be liable to Varian for any failure of Borrower to make (or ORIX’s failure to receive) any payments of Annual Rent to ORIX under the Ground Sublease. ORIX’s rights and obligations under this Agreement shall be binding upon and inure to the benefit of ORIX’s respective successors, assigns and participants.

9. Nothing provided herein is intended to create a joint venture, partnership, tenancy-in-common or joint tenancy relationship between or among any of the parties hereeto.

10. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and, taken together, shall constitute a single Agreement.
11. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State of New York (without regard to conflict of law principles thereof). Each party hereto hereby waives its respective rights to a trial by jury in any action or proceeding to enforce this Agreement or based upon, or arising out of, the subject matter of this Agreement, and this waiver is knowingly, intentionally and voluntarily made by each party hereto.

12. Notwithstanding anything to the contrary in the Ground Lease or the Ground Sublease, ORIX covenants and agrees not to transfer its interests under the Ground Lease or the Ground Sublease separately from any transfer or assignment of its rights and obligations under this Agreement. ORIX shall have the right to assign its rights and delegate its duties under this Agreement upon written notice to Varian (i) to any entity, directly or indirectly, through one or more intermediaries, controlled by, controlling, or under common control with, ORIX, (ii) to any joint venture (whether in the form of a limited liability company, a limited partnership or otherwise), in which any of ORIX or its affiliates has a controlling interest, (iii) as part of a Portfolio Transaction (as hereinafter defined), (iv) to an entity which results from a merger of, reorganization of, or consolidation with the person or entity controlling ORIX, which acquires substantially all of the stock or assets of the person or entity controlling ORIX, or (v) to an entity which has a financial condition that is substantially similar to or better than that of ORIX as of the date of the assignment, as reasonably determined by Varian. Upon ORIX’s satisfaction of the conditions set forth in the prior sentence, and any successor or assign described in (i) through (v) above expressly assuming all of ORIX’s obligations under this Agreement in a writing delivered to Varian, ORIX shall be released from all liabilities and obligations arising under this Agreement after the effective date thereof. Any assignment of this Agreement by ORIX, other than an assignment described in the first sentence of this Section 12 or an assignment in conjunction with a sale that results in a termination of this Agreement in accordance with Section 6, shall be subject to the prior written consent of Varian, which shall not be unreasonably withheld, conditioned or delayed. Varian shall have no right to sell, transfer, assign, pledge or encumber this Agreement or all or any portion its rights hereunder, except that upon written notice to ORIX, Varian may assign all its rights and delegate its duties under this Agreement (i) to any entity, directly or indirectly, through one or more intermediaries, controlled by, controlling, or under common control with, Varian, (ii) to any joint venture (whether in the form of a limited liability company, a limited partnership or otherwise), in which any of Varian or its affiliates has a controlling interest, or (iv) to an entity which results from a merger of, reorganization of, or consolidation with Varian, which acquires substantially all of the stock or assets of Varian.

13. Notwithstanding any other provision of this Agreement to the contrary, in the event ORIX elects to market for sale all or any portion of its leasehold interest created by the Ground Lease or any interest in or right to receive the Annual Rent and Additional Rent under the Ground Sublease (any such interest or right, the “Offered Interest”), then the following provisions shall apply:

   a. ORIX shall first offer to Varian the right to purchase the Offered Interest (the “Right of First Offer”) by advising Varian in writing (the “Offer Notice”) of ORIX’s desire to sell and intent to market the Offered Interest, specifying in reasonable detail the
b. Upon ORIX’s delivery of the Offer Notice to Varian, Varian shall have ten (10) days (the “Response Period”) in which to advise ORIX in writing (the “Offer Response”) whether or not Varian elects to purchase the Offered Interest on all of the Offer Terms. If Varian notifies ORIX that it does not wish to purchase the Offered Interest on the Offer Terms or fails to deliver an Offer Response within the Response Period, then ORIX shall be entitled to pursue a sale of the Offered Interest to a third party (a “Sale”) on substantially the same Offer Terms as are set forth in the Offer Notice (as reasonably determined by ORIX, provided that a reduction in the purchase price by not more than ten percent (10%) shall not be deemed a substantial change to the Offer Terms). In the event, however, that ORIX fails to consummate a Sale on substantially the same Offer Terms set forth in the Offer Notice (as reasonably determined by ORIX, provided that a reduction in the purchase price by not more than ten percent (10%) shall not be deemed a substantial change to the Offer Terms) within six (6) months from the expiration of the Response Period, then Varian’s rights under this Section 13 shall automatically be reactivated and reinstated, and ORIX shall have no further right to market the Offered Interest for sale or to actively pursue efforts to consummate a sale without first sending Varian an Offer Notice with the applicable Offer Terms set forth therein.

C. If Varian delivers an Offer Response within the Response Period advising ORIX of its desire to acquire the Offered Interest on the Offer Terms set forth in the Offer Notice, ORIX shall prepare and deliver to Varian an assignment and assumption agreement (“Assignment”), and, if the Sale involves the transfer of the Ground Lease, deeds transferring both the Ground Sublease and the Ground Lease interest in recordable form, incorporating the Offer Terms and without representation or warranty, along with a notice setting forth a closing date (the “Closing Date”) which shall be no later than thirty (30) days from the date of ORIX’s delivery of the Assignment to Varian. On or before the Closing Date, Varian shall pay to ORIX, in immediately available funds, the total purchase price for Offered Interest contained in the Offer Notice less Varian’s Share of such purchase price, and both ORIX and Varian shall execute and deliver to each other original counterparts of the Assignment. In the event of a breach by either ORIX or Varian of their respective obligations contained in this paragraph, such breaching party shall be liable to the non-breaching party for the non-breaching party’s losses and damages arising from any such breach, provided that if Varian is the breaching party, the Right of First Offer shall automatically be rendered null and void and of no further force or effect.

d. In the event ORIX desires to assign its rights and delegate its duties under this Agreement (i) to any entity, directly or indirectly, through one or more intermediaries, controlled by, controlling, or under common control with, ORIX, (ii) to any joint venture (whether in the form of a limited liability company, a limited partnership or otherwise), in which any of ORIX or its affiliates has a controlling interest, (iii) as part of a Portfolio Transaction, (iv) to an entity which results from a merger of, reorganization of, or consolidation with the person or entity controlling ORIX, which acquires substantially all of the stock or assets of the person or entity controlling ORIX, none of such transfers described in (i) through (iv) above shall trigger Varian’s Right of First Offer. A “Portfolio Transaction” shall mean a contemplated sale to a third party of the leasehold interest created by the Ground Lease, together
with (a) all of the assets that are owned by ORIX, (b) one or more additional assets owned by any entity controlled by, controlling, or under common control with, ORIX, or (c) one or more additional assets owned by a joint venture or co-investment program in which ORIX or one of its affiliates has a controlling interest.

14. Should suit be brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of the cost of suit and not as damages, its attorneys’ fees (including without limitation, costs, expenses, and fees on an appeal).

15. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

[signature page follows]

- 7 -
IN WITNESS WHEREOF, ORIX and Varian have each caused their duly authorized representatives to execute this Agreement as of the day and year first written above.

ORIX:

ORIX PROTON SAN DIEGO, LLC, a Delaware limited liability company

By: /s/ Michael J. Moran
Name: Michael J. Moran
Title: President

VARIAN:

VARIAN MEDICAL SYSTEMS INTERNATIONAL AG, a Swiss corporation

By: /s/ John W. Kuo
Name: John W. Kuo
Title: Director

[Signature Page to Revenue Sharing Agreement]
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<th>Name</th>
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CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (No. 333-168444, No. 333-168443, No. 333-146176, No. 333-130001, No. 333-152903, No. 333-123778, No. 333-75531, No. 333-57006, No. 333-57008, No. 333-57010, No. 333-57012, No. 333-161307) of Varian Medical Systems, Inc. of our report dated November 23, 2011 relating to the consolidated financial statements, financial statement schedule and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/ s / PRICEWATERHOUSE COOPERS LLP
San Jose, California
November 23, 2011
I, Timothy E. Guertin, certify that:

1. I have reviewed this Annual Report on Form 10-K of Varian Medical Systems, Inc. (the "Registrant");

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

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

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth quarter in the case of an annual report) that has materially affected, or is reasonable likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Dated: November 23, 2011

/ s /  T IMOTHY E. G UERTIN

Timothy E. Guertin
President and Chief Executive Officer
CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO EXCHANGE ACT RULE 13a-14(a)/15d-14(a)
AS ADOPTED PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002

I, Elisha W. Finney, certify that:

1. I have reviewed this Annual Report on Form 10-K of Varian Medical Systems, Inc. (the “Registrant”);

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

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

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Dated: November 23, 2011

__________________________
Elisha W. Finney
Senior Vice President, Finance and
Chief Financial Officer

Exhibit 31.2
CERTIFICATION
PURSUANT TO 18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the accompanying Annual Report of Varian Medical Systems, Inc. (the “Company”), on Form 10-K for the year ended September 30, 2011 (the “Report”), I, Timothy E. Guertin, Chief Executive Officer of the Company, hereby certify pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002 that:

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

Dated: November 23, 2011

/ s / TIMOTHY E. GUERTIN

Timothy E. Guertin
President and Chief Executive Officer
CERTIFICATION
PURSUANT TO 18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the accompanying Annual Report of Varian Medical Systems, Inc. (the “Company”), on Form 10-K for the year ended September 30, 2011 (the “Report”), I, Elisha W. Finney, Chief Financial Officer of the Company, hereby certify pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002 that:

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

Dated: November 23, 2011

/ S / ELISHA W. FINNEY

Elisha W. Finney
Senior Vice President, Finance and
Chief Financial Officer