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
For the fiscal year ended October 2, 2015

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _________ to _________

Commission File Number: 1-7598

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

Delaware 94-2359345
(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification Number)

3100 Hansen Way, Palo Alto, California 94304-1038
(Address of principal executive offices)

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

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 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 ☐

At November 13, 2015, the number of shares of the Registrant’s common stock outstanding was 96,884,737

DOCUMENTS INCORPORATED BY REFERENCE
Definitive Proxy Statement for the Company’s 2016 Annual Meeting of Stockholders—Part III of this Form 10-K

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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. (“VMS”) and its subsidiaries (collectively “we,” “our,” “Varian” 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 Item 1A, “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 tube and flat panel products; growth drivers; future orders, revenues, backlog, earnings or other financial results; and any statements using the terms “believe,” “expect,” “anticipate,” “can,” “should,” “would,” “could,” “estimate,” “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

Overview

We, Varian Medical Systems, Inc., are a Delaware corporation originally incorporated in 1948 as Varian Associates, Inc. We are the world’s leading manufacturer of medical devices and software for treating cancer and other medical conditions with radiotherapy, radiosurgery, proton therapy and brachytherapy. We are also a premier supplier of X-ray imaging components for medical, scientific, cargo screening, and industrial applications. 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 millions of lives every year everywhere. To meet this challenge, we offer tools for fighting cancer, taking X-ray images and protecting ports and borders.

Our operations are currently grouped into two reportable operating segments: Oncology Systems and Imaging Components. Our Ginzton Technology Center (“GTC”) and Varian Particle Therapy (“VPT”) business are reflected in the “Other” category, because these operating segments do not meet the criteria of a reportable operating segment. The operating segments were determined based on how our Chief Executive Officer, who is our Chief Operating Decision Maker (“CODM”), views and evaluates our operations. The CODM allocates resources to and evaluates the financial performance of each operating segment primarily based on operating earnings.

Oncology Systems. Our largest business segment is Oncology Systems, which designs, manufactures, sells and services hardware and software products for treating cancer with conventional radiotherapy, and advanced treatments such as fixed field intensity-modulated radiation therapy (“IMRT”), image-guided radiation therapy (“IGRT”), volumetric modulated arc therapy (“VMAT”), stereotactic radiosurgery (“SRS”), stereotactic body radiotherapy (“SBRT”) and brachytherapy, as well as informatics software for information management, clinical knowledge exchange, patient care management, practice management and decision-making support for comprehensive cancer clinics, radiotherapy centers and medical oncology practices.

Our hardware products include linear accelerators, brachytherapy afterloaders, treatment simulation and verification equipment and accessories; and our software products include information management, treatment planning, image processing, clinical knowledge exchange, patient care management, decision-making support and practice management software. Our products enable radiation oncology departments in hospitals and clinics to perform conventional radiotherapy and brachytherapy treatments and offer advanced treatments such as IMRT, IGRT, VMAT, SRS and SBRT. Our products are also used by surgeons and radiation oncologists to perform radiosurgery. Furthermore, our software products help improve physician engagement and clinical knowledge-sharing, patient care management and management of cancer clinics, radiotherapy centers and oncology practices for better performance. Our worldwide customers include university research and community hospitals, private and governmental institutions, healthcare agencies, physicians’ offices, oncology practices, radiotherapy centers and cancer care clinics.
**Imaging Components.** Our Imaging Components business segment designs, manufactures, sells and services X-ray imaging components for use in a range of applications, including radiographic or fluoroscopic imaging, mammography, special procedures, computed tomography, computer aided diagnostics, and industrial applications. We provide a broad range of X-ray imaging components including X-ray tubes, flat panel digital image detectors, high voltage connectors, image processing software and workstations, ionization chambers and automatic exposure control systems. We sell our X-ray imaging components to imaging system original equipment manufacturer (“OEM”) customers that incorporate them into their medical diagnostic, dental, veterinary and industrial imaging systems, to independent service companies and directly to end-users for replacement purposes. Our Imaging Components business segment also designs, manufactures, sells and services security and inspection products, which include 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. We generally sell security and inspection products to OEM customers who incorporate our products into their inspection systems.

**Other.** The “Other” category is comprised of VPT and the operations of the GTC.

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. Although proton therapy has been in clinical use for more than four decades, it has not been widely deployed due to high capital cost. Our current focus is bringing our expertise in traditional radiation therapy to proton therapy to improve its clinical utility and to reduce its cost of treatment per patient, so that it is more widely accepted and deployed.

GTC, our scientific research facility, 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. 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 Item 1A, “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. 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. This goal 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, VMAT, 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 is comprised of a physician specializing in radiation oncology, a medical physicist for planning patient treatments and conducting appropriate quality assurance procedures and a radiation therapist for positioning the patients for treatment and 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 medical 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 treatment 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 allows for more precision by conforming the radiation beams more closely to the shape of the tumor and, therefore, allowing physicians to deliver higher doses of radiation than conventional radiation treatments, while limiting 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 every year additional treatment centers, from university hospitals to local community clinics, adopt IMRT for their treatments. We are a leading global provider of products that enable IMRT for the treatment of cancer.

VMAT 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, with faster treatment times. Our RapidArc™ radiotherapy products plan and deliver VMAT treatments.

Physicians, hospitals and clinics place additional value on radiotherapy equipment and treatments, such as VMAT, 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 for more patients.

IGRT is another advanced form of external beam radiotherapy complementing IMRT to enhance treatments. While IMRT helps physicians more precisely shape the beam to the tumor, IGRT goes further in allowing physicians to accommodate for a tumor moving or shrinking and, therefore improving accuracy. IGRT technologies provide dynamic, real-time visualization enabling precise treatment of small, moving and changing tumors with greater intensity and accuracy. This allows clinicians to deliver even higher doses of radiation to tumors with the goal of sparing more of the surrounding healthy tissue and potentially improving outcomes. We believe IGRT has become an accepted standard for treatment in the radiation oncology community.

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 treat cancerous and non-cancerous lesions anywhere in the body.

An alternative to external beam radiotherapy, brachytherapy involves the insertion of radioactive seeds, wires or ribbons directly into a tumor or 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 precision 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 its high capital cost and the market is still developing. 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 from approximately 14 million in 2012 to almost 20 million by 2025, 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 deliver new, higher standards of care.

The rise in cancer cases, together with the increase in sophistication of new treatment protocols, 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, VMAT, SRS, SBRT, brachytherapy and proton therapy), and developing technology and equipment (such as EDGE™ and Truebeam™) that enable treatments 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. According to a peer-reviewed publication in the International Journal of Radiation Oncology Biology and Physics in 2014, radiotherapy is required in more than half of new cancer patients, particularly in low- and middle-income countries, and it is estimated that greater than 9,000 additional treatment machines will be required by 2020 in these countries alone. For example, China, India and Brazil are estimated to require over 3,800, 1,200 and 400 additional machines, respectively. This demand in emerging markets, coupled with ever increasing incidences of cancer, represent additional drivers for our continued growth in international markets.

**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, and advanced treatments such as IMRT, IGRT, VMAT, 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 radioactive implantable seeds; treatment planning software for planning treatment sessions and dose delivery; treatment simulation and verification equipment and quality assurance software for simulating and verifying treatment plans before treatment as well as verification of correct treatment delivery; and information management software for recording the history and results of treatments and other patient treatment information and data, including patient images. This business’s other software products help improve physician engagement and clinical knowledge-sharing, patient care management and management of cancer clinics, radiotherapy centers and oncology practices for better performance.

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, 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 make 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, as well as clinicians in multiple locations, to share equipment, resources and information in a more efficient, 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.

Medical linear accelerators are the core device for delivering conventional external beam radiotherapy, IMRT, IGRT, VMAT, SRS and SBRT, and we produce versions of these devices to suit various clinical requirements. Our UNIQUE™ medical linear accelerator is a low-energy linear accelerator for the more price sensitive emerging markets, designed to meet the evolving needs of our IMRT and IGRT customers in these markets. The Clinac® iX linear accelerators deliver high-energy X-ray beams and 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, precise high-energy device with a faster dose delivery.
rate and more precise isocenter compared to the Clinac iX. At the high end, the TrueBeam system for image-guided radiotherapy and radiosurgery is a fully-integrated high-energy system designed from the ground up to treat a moving target with higher speed and accuracy and complements our accelerator product line portfolio.

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. In addition, we manufacture the Calypso® system (not approved for use in all markets), which can continuously track and monitor the position of implanted and surface Beacon® transponders. This technology allows the treatment beam to be precisely aimed to deliver the full, prescribed dose to the tumor, and minimize exposure of surrounding healthy tissues. We commercially released the Calypso soft tissue Beacon transponder in fiscal year 2015 which is indicated for general, non-organ specific usage outside of the lung, including tumor sites that exhibit significant respiratory motion. Varian is conducting a confirmatory clinical study for 510(k) clearance for its Anchored Beacon® transponder for the lung.

During fiscal year 2015, we launched VitalBeam™, which is designed to offer clinics an affordable option for implementing advanced image-guided radiotherapy. VitalBeam is positioned for customers that need a cost-effective technology package for offering high-quality, high-throughput radiation therapy, and for expanding clinical capabilities over time but not necessarily the full capacity of a TrueBeam linac. VitalBeam received 510(k) clearance in fiscal year 2015.

We also offer the EDGE radiosurgery suite, a combination of products for performing advanced radiosurgery using new real-time tumor tracking technology and motion management capabilities. The EDGE radiosurgery suite includes the EDGE radiosurgery accelerator and the Calypso System with Dynamic Edge™ Gating, and the PerfectPitch™ Couch with six degrees of freedom to accurately and precisely align the patient position. 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 offers cone-beam computerized tomography (“CBCT”) imaging software capability 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. 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 are a proprietary implementation of VMAT that coordinates beam shaping, dose rate and gantry speed to deliver a highly conformal dose distribution to the target tumor. RapidArc 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, as well as greater patient throughput and lower cost per patient for the hospital or clinic. We believe RapidArc represents a significant advancement in IMRT cancer treatment.

Our 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, as well as help improve physician engagement and clinical knowledge-sharing, patient care management and management of cancer clinics, radiotherapy centers and oncology practices for better performance. Prior to any treatment, physicians must prescribe, or plan, the course of radiation delivery for the patient. We offer a range of treatment planning products that assist physicians in designing 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. Clinics may use plan models included with Eclipse or can create models based on their own treatment methods and protocols. Our RapidPlan™ Knowledge-based Planning tool creates a new category for treatment planning systems in which statistical models can be used to predict the achievable quality of an IMRT treatment from a patient’s anatomy. RapidPlan is designed to streamline the planning process by using shared clinical knowledge embedded in its statistical plan models. Our Insightive™ analytics solution aggregates clinical and operational data and allows for improved decision making and practice management. Insightive enables oncology administrators and clinicians to use real-time information to discover patterns and trends through interactive dashboards and visualizations. The OncoPeer™ cloud community is a platform where oncologists, clinicians and other oncology professionals can publish knowledge, share data, exchange treatment techniques and discuss best practices within a professional oncology network.
During fiscal year 2015, we received 510(k) clearance for a new version of Varian Treatment™, which connects our ARIA® Oncology Information Management System (“ARIA”) to third party linear accelerators, expanding our software support of third party machines. To enhance our treatment planning product lines, we entered into a licensing agreement with the Fraunhofer Institute for a sophisticated multi-criteria optimization radiotherapy treatment planning tool that enables clinicians to quickly compare plans and select the optimal one without having to use a time-consuming trial-and-error process. We also purchased certain assets comprising a business from a sole proprietor for treatment planning software tools that will enhance both planning efficiency and treatment plan quality and allow oncologists to quickly adjust their intended dose distributions ahead of the treatment planning process.

Our ARIA information system 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. ARIA received ARRA-HITECH Stage II certification and implemented the new ICD-10 billing codes in 2014. Our FullScale™ oncology-specific information technology solutions take advantage of virtualization or cloud technologies to deploy our ARIA oncology information and Eclipse treatment planning systems in a way that enables treatment centers to take advantage of economies of scale. In May 2015, we entered into a strategic alliance with FlatIron Health (“FlatIron”) to develop the next generation of cloud-based oncology informatics products, leveraging our expertise in radiation oncology and FlatIron's expertise in medical oncology. The alliance intends to enable software for an integrated cloud-based oncology information product suite. During fiscal year 2014, we also entered into agreements with a variety of companies to increase the capabilities of our ARIA Information Systems software. Most notable among these were agreements with Infor, a health data exchange solution to replace our proprietary Information Exchange Manager; and Tableau, an advanced data exploration and visualization platform.

During fiscal year 2015, we completed the integration of the software acquired in fiscal year 2014 from Velocity Medical Solutions LLC (“Velocity”) into our existing products at the clinical process level to aggregate unstructured treatment and imaging data from diverse systems. The integration allows for a more comprehensive view of a patient's diagnostic imaging and treatment history and helps clinicians make more informed treatment decisions. During fiscal year 2015, we integrated the dose calculation software acquired in fiscal year 2014 from Transpire, Inc. (“Transpire”) into our BrachyVision and Eclipse systems. The integration enables us to improve our image guidance tools and deliver high-precision radiotherapy for the treatment of cancer. Qumulate™ is our cloud-based software technology that collects and analyzes machine performance data in a radiation therapy department and allows users to compare their machine performance data and trends against a community of users’ data.

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. We have a strategic global partnership with Siemens AG (“Siemens”) through which, among other things, we represent Siemens diagnostic imaging products to radiation oncology clinics in most global markets, and Siemens, in turn, represents our equipment and software products for radiotherapy and radiosurgery to its healthcare customers in agreed upon countries. Furthermore, we and Siemens have developed interfaces to enable ARIA and Eclipse to connect with Siemens linear accelerators and imaging systems, and are exploring opportunities to co-develop new imaging and treatment solutions. We hold a minority equity interest in Augmenix, Inc. (“Augmenix”), a company that is developing hydrogel products to decrease irradiation of radiation sensitive tissue such as the rectum.

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 real-time treatment planning for HDR prostate brachytherapy.

Revenues from our Oncology Systems business segment represented 76%, 77% and 77% of total revenues for fiscal years 2015, 2014 and 2013, respectively. Our Oncology Systems business segment revenues include both product and service revenues. Product revenues in Oncology Systems accounted for 44%, 46% and 47% of total revenues for fiscal years 2015, 2014 and 2013, respectively. Service revenues in Oncology Systems accounted for 32%, 31% and 30% of total revenues for...
fiscal years 2015, 2014 and 2013, respectively. See further discussion in “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.

**Imaging Components**

Our Imaging Components business segment is a world leader in designing and manufacturing X-ray tubes, flat panel detectors, imaging software, and high voltage connectors, which are key components of X-ray imaging systems. We sell our products to OEM customers both for incorporation into 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 broad application as an alternative to image intensifier tubes and X-ray film. Our flat panel detector products 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, suffers less degradation over time than image intensifier tubes, and is more cost effective than X-ray film.

We also offer image processing tools for X-ray imaging systems for a variety of modalities including fluoroscopy, angiography, cardiology, mammography and general radiography. The image processing tools may be combined with our radiographic flat panel detectors to upgrade film-based X-ray imaging systems to digital systems.

We are currently in the process of introducing multiple new products which we believe will help promote the growth of our Imaging Components business. During fiscal year 2015, through our acquisitions, we broadened our portfolio of components by adding high voltage connectors, ionization chambers, automatic exposure control systems and image processing software for computer aided diagnosis. Changes in access to diagnostic radiology or the reimbursement rates associated with diagnostic radiology as a result of the Patient Protection and Affordable Care Act (the “Affordable Care Act”) in the United States and similar state proposals, or otherwise, could however affect demand for our products in our Imaging Components business.

Our Imaging Components business also 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-1 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.

Generally, we sell our security and inspection products to OEM customers who incorporate our products into OEM inspection systems. The OEM customers sell the systems to customs and other government agencies for use in overseas ports and borders to screen overland, rail, and sea cargo for contraband, weapons, narcotics and explosives, as well as for manifest verification. We also sell our security and inspection products to commercial enterprises in the casting, power, aerospace, chemical, petro-chemical and automotive industries for nondestructive product examination purposes, such as industrial inspection and manufacturing quality control.

In August 2015, we acquired Claymount Investments B.V. (“Claymount”), a Netherlands-based supplier of X-ray imaging components. Claymount is a strategic supplier to many global medical X-ray equipment manufacturers and is one of the world's leading suppliers of high voltage connectors, ionization chambers and solid state automatic exposure control systems for controlling dose during medical X-ray imaging. Claymount enhances our ability to support a continuing industry-wide transition from analog to digital X-ray imaging and will allow us to expand our line of components and integrated subsystems.

In April 2015, we completed the acquisition of 73.5% of the then outstanding shares of MeVis Medical Solutions AG (“MeVis”), a company based in Bremen, Germany that provides image processing software and services for cancer screening.
We intend to combine MeVis' image processing and analysis software with our portfolio of flat-panel detector and imaging workstation offerings to provide integrated solutions for cancer screening and computer aided detection.

Our security and inspection products are complemented by our Attila software that enables us to provide comprehensive radiation solutions for customers that integrate our high-energy X-ray technology into systems for cargo screening, industrial inspection and non-destructive testing. This software can benefit our customers in the design and verification of systems where radiation effects play a critical role in product performance, safety, or reliability.

Revenues from our Imaging Components business segment represented 20%, 22% and 22% of total revenues for fiscal years 2015, 2014 and 2013, respectively. For a discussion of the Imaging Components business segment financial information, see Note 17, "Segment Information" of the Notes to the Consolidated Financial Statements.

Other

Our VPT business develops, designs, manufactures, sells and services products and systems for delivering proton therapy, another form of external beam therapy 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.

Our VPT technology and systems are in operation at the Paul Scherrer Institute in Villigen, Switzerland, the Rinecker Proton Therapy Center in Munich, Germany and the Scripps Proton Therapy Center in San Diego, California.

During fiscal years 2015, 2014 and 2013, we recorded six, three, and no VPT proton therapy product orders, respectively.

For certain proton therapy project orders, we may elect to provide a portion of the project financing, such as:

In July 2015, we, through one of our subsidiaries, committed to loan up to $91.5 million to MM Proton I, LLC in connection with a purchase agreement to supply a proton system to equip the New York Proton Center. As of October 2, 2015, we have loaned $18.7 million under this loan, with the remainder to be drawn down primarily through fiscal 2018.

In May 2015, we, through one of our subsidiaries, committed to loan up to $35.0 million to the Maryland Proton Therapy Center, which included rolling over an existing loan for $10.0 million plus $2.2 million of previously accrued interest. As of October 2, 2015, our outstanding commitment under the loan to MPTC was $22.8 million, to be paid in four installments of $5.7 million each on June 30, 2016, September 30, 2016, December 30, 2016 and March 31, 2017.

As of October 2, 2015, our outstanding loans to California Proton Treatment Center, LLC were $83.9 million.

See Note 16, "VPT Loans" of the Notes to the Consolidated Financial Statements for further discussion on our VPT loans.

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. GTC is also actively engaged in searching for chemical or biological agents that work synergistically with radiation to improve treatment outcomes.

Revenues from our “Other” category represented 4% of total revenues in fiscal year 2015, and 1% of total revenues in each of fiscal years 2014 and 2013. For a discussion of segment financial information, see Note 17, "Segment Information" of the Notes to the Consolidated Financial Statements.

Marketing and Sales

We employ a combination of direct sales forces and independent distributors or resellers for the marketing and sales of our products worldwide. The recent environment has been characterized by fluctuations in gross orders and revenues in and among our geographic regions, with a greater percentage coming from emerging markets within our international region, as well as
ongoing concerns about the global economy. 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 stronger U.S. Dollar against foreign currencies would make our product pricing less competitive in the local currencies of our international customers. A stronger U.S Dollar against foreign currencies would also lower our international revenues and gross orders when measured in U.S. Dollars. These conditions affected our business and demand for our products in fiscal year 2015 and could continue to do so in fiscal year 2016. In fiscal years 2015, 2014 and 2013, we did not have a single customer that represented 10% or more of our total revenues.

Oncology Systems

For our Oncology Systems business segment, we sell direct in the United States and Canada and use a combination of direct sales and independent distributors in international regions. Through our strategic global partnership with Siemens, we represent Siemens diagnostic imaging products to radiation oncology clinics in most global markets. Siemens represents our equipment and software products for radiotherapy and radiosurgery to its healthcare customers in agreed upon countries. 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 last 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, the general constriction in credit availability, and consolidation of providers. In addition, the last economic downturn 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 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.

Over the last few years, we have seen a greater percentage of Oncology Systems gross orders and revenues coming from emerging markets, which typically purchase lower-priced products, and which generally have lower gross margin percentages, compared to developed markets. We expect that this shift in geographic mix of gross orders and revenues will generally continue and may negatively impact Oncology Systems gross margin. Overall, we have seen an increased portion of gross orders and revenues coming from services and software licenses, both of which have higher gross margin percentages than our hardware products.

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 VMAT tend to drive demand for radiotherapy products, large changes in reimbursement rates or reimbursement structure can affect customer demand and cause market shifts. We do not know what impact the Patient Protection and Affordable Care Act (the “Affordable Care Act”) in the United States will have on long-term growth or demand for our products and services. We believe, however, that growth of the radiation oncology market in the United States is being impacted as customers’ decision-making processes are complicated by the uncertainties surrounding the Affordable Care Act and reimbursement rates for radiotherapy and radiosurgery, and that this uncertainty will likely continue into the next fiscal year and result in a high degree of variability of gross orders and revenue from quarter-to-quarter. We also believe that the Affordable Care Act, the rise of Accountable Care Organizations and increased bundled payment arrangements are all causing healthcare providers to re-evaluate their business models, and we are seeing increased consolidation of hospitals and clinics and more integration of systems and equipment across multi-site healthcare networks, which is impacting transaction size, timing and purchasing processes, and also contributing to the increased variability.

Total revenues for our Oncology Systems business segment were approximately $2.3 billion for fiscal years 2015, 2014 and 2013. We divide our market segments for Oncology Systems revenues into The Americas, EMEA, and APAC, and these regions constituted 52%, 30%, and 18%, respectively, of Oncology Systems revenues during fiscal year 2015; 50%, 30%, and 20%, respectively, of Oncology Systems revenues during fiscal year 2014; and 50%, 29%, and 21%, respectively, of Oncology Systems revenues during fiscal year 2013.
**Imaging Components**

Our Imaging Components business 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 imaging components products and security and inspection products to a limited number of OEM customers. 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 Imaging Components revenues in the foreseeable future. Our ten largest OEM customers represented 62%, 63% and 63% of our total Imaging Components segment revenues during fiscal years 2015, 2014 and 2013, respectively. A significant portion of our Imaging Components customers are outside of the United States, and in fiscal year 2015, demand for Imaging Components products was negatively impacted by pricing pressures resulting from the strengthening of the U.S. Dollar. Because the products in Imaging Components are generally priced in U.S. Dollars, some customers asked for additional discounts, delayed purchasing decisions, or considered moving to in-sourcing supply of such components, or migrating to lower cost alternatives.

We sell our security and inspection products to regional integrators outside the United States as well as commercial enterprises in the casting, power, aerospace, chemical, petro-chemical and automotive industries for use in non-destructive investigation and testing applications. We believe demand for our security and inspection products is driven primarily by cargo screening, border protection, and non-destructive testing needs domestically and internationally. This business is heavily influenced by domestic and international government policies on border and port security, political change and government budgets. International sales of certain of our linatrons are subject to U.S. export licenses that are issued at the discretion of the U.S. government. Orders and revenues for our security and inspection 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 additional orders until complete deployment and installation of previously ordered products. We have seen domestic and international governments postpone purchasing decisions and delay installations of products for security and inspection systems. These postponements and delays have been and may in the future be related to re-evaluating program priorities, evaluating funding options, and collaboration between individual government agencies. Furthermore, bid awards in this business may be subject to challenge by third parties, as we have previously encountered, which can make the conversion of some security and inspection products orders to revenue unpredictable. The market for border protection systems has slowed significantly and end customers, particularly in oil-based economies and war zones in which we have a significant customer base, are delaying system deployments or tenders and considered moving to alternative sources, resulting in a decline in the demand for security and inspection products which is expected to continue.

Changes in access to diagnostic radiology or the reimbursement rates associated with diagnostic radiology as a result of the Affordable Care Act and similar state proposals will likely affect domestic demand for our products in our Imaging Components business.

Total revenues for our Imaging Components business segment were $611.2 million , $660.2 million and $641.9 million for fiscal years 2015, 2014 and 2013, respectively. We divide our market segments for Imaging Components revenues by region into The Americas, EMEA, and APAC, and these regions constituted 35%, 26%, and 39%, respectively, of Imaging Components revenues during fiscal year 2015; 35%, 28%, and 37%, respectively, of Imaging Components revenues during fiscal year 2014 and 35%, 28%, and 37%, respectively, of Imaging Components revenues during fiscal year 2013.

**Other**

In the VPT business, we primarily use direct sales specialists who collaborate with our Oncology Systems sales group globally on projects. Potential customers are government-sponsored hospitals and research institutions and research universities, which typically purchase products through public tenders, as well as private hospitals, clinics and private developers. While this market is still developing, there has been significant recent growth in this market and we believe that growth in this business will continue 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. We are investing substantial resources to grow this business. Proton therapy facilities are large-scale construction projects that are time consuming and involve significant customer investment and often complex project financing. Consequently, this business is vulnerable to general economic and market conditions, as well as reimbursement rates. Customer decision-making cycles tend to be very long, and orders generally involve many contingencies. We have seen the tight credit markets constrain the ability of proton therapy projects to obtain financing.

**Backlog**

Backlog is the accumulation of all gross orders for which revenues have not been recognized and are still considered valid. Backlog also includes a small portion of billed service contracts that are included in deferred revenue. Backlog is stated at
historical foreign currency exchange rates, and revenue is released from backlog at current exchange rates, with any difference recorded as a backlog adjustment. 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. Our backlog at the end of fiscal year 2015 was $3.5 billion, including approximately $345 million in VPT backlog, of which we expect to recognize approximately 50% to 55% as revenues in fiscal year 2016. Our backlog at the end of fiscal year 2014 was $3.2 billion, of which $1.6 billion was recognized as revenues in fiscal year 2015. Our Oncology Systems backlog represented 82% and 84% of the total backlog at the end of fiscal years 2015 and 2014, respectively.

Gross orders are defined as the sum of new orders recorded during the period adjusted for any revisions to existing orders during the period. New orders are recorded for the total contractual amount, excluding certain pass-through items, once a written agreement for the delivery of goods or provision of services is in place and, for businesses other than VPT, when shipment of the product (or in the case of certain highly customized products in our Imaging Components business, construction of the product) is expected to occur within two years, so long as any contingencies are deemed perfunctory. However, we will not record security and inspection products orders from governmental agencies with bid protest provisions until the expiration of the bid protest period. For our VPT business, we record orders when construction of the related proton therapy treatment center is reasonably expected to start within two years, but only if any contingencies are either deemed perfunctory or if the existence and nature of material contingencies is disclosed. However, we will not record VPT orders if there are major financing contingencies, if a substantial portion of the financing for the project is not reasonably assured or if customer board approval contingencies are pending.

We perform a quarterly review to verify that outstanding orders in the backlog remain valid. Aged orders that are not expected to be converted to revenues are deemed dormant and are reflected as a reduction in the backlog amounts and net orders in the period identified. Backlog adjustments are comprised of dormanties, cancellations, foreign currency exchange rate adjustments, backlog from acquisitions and other adjustments. In fiscal years 2015, 2014 and 2013, our backlog adjustments were $214.9 million, $176.3 million and $257.3 million, respectively.

**Competition**

Rapidly evolving technology, intense competition and pricing pressure characterize the markets for radiation therapy equipment and software products. We compete with companies worldwide, some of whom may have greater financial, marketing and other resources than we have. Our 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, VMAT and proton therapy. 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 also maintained 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 VMAT 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 sustain 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 patterns, long-term relationship and capabilities of customers’ existing equipment. We believe we compete favorably with our competitors based upon our strategy of providing a complete package solution of products and services in the field of radiation oncology and our continued commitment to global distribution and customer services, value-added manufacturing, technological leadership and new product innovation. 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. Further, 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 gross orders.
We are the leading provider of medical linear accelerators and related accessories. In radiotherapy and radiosurgery markets, we compete primarily with Elekta AB and Accuray Incorporated. Recently, ViewRay Incorporated introduced an MR-Cobalt therapy device that is expected to also compete with us in this market. With our information and image management, simulation, treatment planning and radiosurgery products, we also compete with a variety of companies, such as Philips Medical Systems, RaySearch Laboratories AB, Brainlab AG and Best Theratronics, Ltd. We also encounter some competition from providers of enterprise hospital information systems. With respect to our brachytherapy operations, our competitors are Elekta AB, MIM Software Inc. and Eckert & Ziegler BEBIG GmbH. In our Oncology Systems 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. This may involve funding and, in some instances, sponsoring clinical research and studies relating to the efficacy, comparative effectiveness and safety of radiation therapy as compared to such other alternative treatments.

With respect to our medical imaging components within our Imaging Components business segment, we often compete with the in-house manufacturing operations of the major diagnostic imaging systems companies, which are the primary OEM customers for our medical imaging components. 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 OEM customers that 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 as well as small start-up manufacturers in China. 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 OEM customers, 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. In the flat panel market, we primarily compete against Perkin-Elmer, Inc., Trixell S.A.S., Vieworks Co., Ltd., Canon, Inc., and Hamamatsu Corporation as well as emerging low cost manufacturers from China such as iRay Technology (Shanghai) Limited, and Jiangsu CareRay Medical Systems Co., Ltd.

With respect to our security and inspection products within our Imaging Components business segment, we compete with other OEM suppliers, primarily outside the United States in the security and inspection market. Currently, our major competitor is Nuctech Company Limited, and we have also seen some competition from Siemens. The market for our security and inspection 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 integrated volumetric imaging. In the proton therapy market, we compete principally with Hitachi Heavy Industries, Ion Beam Applications S.A., Mevion Medical Systems, Inc. and Sumitomo Heavy Industries, Ltd. There are a number of smaller competitors that are also developing proton therapy products. We are the only established company in the field of radiation therapy to enter the particle therapy market directly.

Customer Services and Support

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. Our domestic service centers are in Milpitas, California; Las Vegas, Nevada and Atlanta, Georgia. Our international service centers are in France, United Kingdom, Switzerland, Denmark, Belgium, Germany, Netherlands, Spain, Italy, United Arab Emirates, Saudi Arabia, Russia, India, Japan, China, Malaysia, Singapore, Thailand, Australia, Brazil, South Korea, Hungary, Austria, Finland and Canada. We also have 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; Cham, Switzerland and Tokyo, Japan. Our network of service engineers and customer support specialists provide installation, warranty, repair, training and support services, project management, site planning, and professional services. We also have a distributed service parts network of regional hubs and forward-stocking locations across all major geographic areas. We generate service revenues by providing services to customers on a time-and-materials basis, replacement part sales and through post-warranty equipment service.

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contracts and software support contracts. Most of the field service engineers are our employees, but our products are serviced by employees of distributors and/or agents in a few foreign countries. Customers can access our extensive service network by calling any of our service centers.

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 medical imaging components and security and inspection products for 12 months. We provide technical advice and consultation for medical imaging components to major OEM customers from our offices in Salt Lake City, Utah; Charleston, South Carolina; Liverpool, New York and Downers Grove, Illinois and internationally in the Philippines, Japan, China, Netherlands and 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 and Liverpool, New York to meet the technical support requirements of independent service companies that use our medical imaging components products. We provide technical support and service for our security and inspection products to major OEM customers from our offices in Las Vegas, Nevada and Lincolnshire, Illinois and internationally in France, United Kingdom, Italy, Japan and Belgium.

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 five-year term or longer). We believe customer service and support are an integral part of our VPT competitive strategy.

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 components of their tumor tracking and motion management products in Seattle, Washington. Our security and inspection linear accelerators are principally manufactured in Las Vegas, Nevada. We manufacture components and sub-systems for our proton therapy products and systems in Troisdorf, Germany. We manufacture our X-ray imaging component products in Salt Lake City, Utah; Charleston, South Carolina; Liverpool, New York; Downers Grove, Illinois; Bremen, Germany; Willich, Germany; Dinxperlo, Netherlands; Manila, Philippines; 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 security and inspection products) 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 materials, purchased parts and assemblies through on line inspection. We outsource the manufacturing of many major subassemblies and perform system design, assembly and testing in house. We believe outsourcing enables us to reduce or maintain 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 security and inspection products; copper, lead, tungsten, thernium, 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.
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 $245.2 million, $234.8 million and $208.2 million in fiscal years 2015, 2014 and 2013, 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, Germany, 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, image processing software, imaging devices, simulation, patient positioning and equipment diagnosis and maintenance tools. Development for our high-energy linear accelerators is focused on improvements in accelerator technology, size, and mobility to address the needs of our customers in the market.

Within Imaging Components, development is primarily conducted at our Las Vegas, Nevada; Salt Lake City, Utah; Palo Alto, California; Liverpool, New York; Lincolnshire, Illinois and Downers Grove, Illinois facilities domestically and at our Netherlands, Germany and Switzerland facilities internationally and is primarily focused on developing and improving medical imaging component technology. 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 generators for medical imaging. Research in imaging technology is aimed at developing new panel technologies for low cost radiographic imaging, wireless panel interfaces, better dose utilization in dental imaging, improved image quality for cone beam CT and new image processing tools for advanced applications.

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

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 and other situations where people may come in contact with radiation (for example, when our security and inspection 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. 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), or found to be so by a competent regulatory authority, we may be required to correct or recall the product and notify other regulatory authorities. We maintain limited product liability insurance coverage and currently self-insure professional liability/errors and omissions liability.

Government Regulation

U.S. Regulations

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, 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 “FDCA”) 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, imaging workstations and flat panel detectors are also considered medical devices. Under the FDAC, 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, existing currently marketed medical device obtain either 510(k) pre-market notification clearance or pre-market approval (“PMA”) before it can market or sell those products in the United States. The 510(k) clearance process is applicable when the device introduced into commercial distribution is substantially equivalent to a legally marketed device. The process of obtaining 510(k) clearance generally takes at least six months from the date the application is filed, but could take significantly longer, and generally requires submitting supporting testing data. After a product receives 510(k) clearance, any 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 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 issued 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 submits 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 business segment and the proton therapy systems manufactured by our VPT business are Class II medical devices.

Quality systems. 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 to determine compliance with the QSR. If in connection with these inspections the FDA believes the manufacturer has failed to comply with applicable regulations and/or procedures, it may issue observations that would necessitate prompt corrective action. If FDA inspection observations 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 (which would similarly necessitate prompt corrective action) and/or proceed directly to other forms of enforcement action. Failure to respond timely to FDA inspection 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 United States for products manufactured in overseas locations and denial of export rights for U.S. products and criminal and civil fines.

The FDA and the Federal Trade Commission (“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. 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 material requires a specific radioactive material license. For the United States, manufacture and distribution of these radioactive sources and devices also must be in accordance with a model specific certificate issued by either the NRC or by an Agreement State. In essentially every country and state, installation and service of these products must be in accordance with a specific radioactive materials license issued by the applicable radiation control agency. 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 “Critical Accounting Estimates” in MD&A, and Note 9, “Commitments and Contingencies” of the Notes to the Consolidated Financial Statements.”

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, 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, national and state laws regulate privacy and may regulate our use of data. Furthermore, HIPAA was amended by the HITECH Act to provide that business associates who have access to patient health information provided by hospitals and healthcare providers are now directly subject to HIPAA, including the associated enforcement scheme and inspection requirements.

Medicare and Medicaid Reimbursement
The federal and state governments of the United States 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. In the past, we have seen our customers’ decision-making process complicated by the uncertainties surrounding reimbursement rates for radiotherapy and radiosurgery in the United States, such as we experienced in 2012 with the reductions to reimbursement rates for radiation therapy proposed by CMS. 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 provisions of the Affordable Care Act went into effect in 2012. Specifically, one of the components of the law is a 2.3% excise tax on sales of most medical devices, which include our Oncology Systems products, which started on January 1, 2013. This tax has had and may continue to have a negative impact on our gross margin. Other elements of this legislation, including comparative effectiveness research, an independent payment advisory board, payment system reforms (including shared

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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 may continue to do so.

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 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 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 security and inspection 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 “Critical Accounting Estimates” in MD&A and Note 9, “Commitments and Contingencies” of the Notes to the Consolidated Financial Statements.”

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 and agents 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 Europe, 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, as well as enactment of stricter legislation. We are also subject to international “fraud and abuse” laws and regulations, as well as false claims and misleading advertisement laws.

Anti-Corruption Laws and Regulations .

We are 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, and the Law “On the Fundamentals of Health Protection in the Russian Federation,” which became effective in January 2012. In general, there is a worldwide trend to strengthen anticorruption laws and their enforcement, and the healthcare industry and medical equipment manufacturers have been particular targets of these investigation and enforcement efforts. Any violation of these laws by us or our agents or distributors 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 2014 Corruption Perceptions Index measured the degree to which public sector corruption is perceived to exist in 174 countries/territories around the world, and found that nearly seventy percent 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 50, on a scale from 100 (very clean) to 0 (highly corrupt). We currently operate in many countries where the public sector is perceived as being more or highly corrupt and our strategic business plans include expanding our business in regions and countries that are rated as higher risk for corruption activity by Transparency International.

Increased business in higher risk countries could subject us and our officers and directors to increased scrutiny and increased liability. In addition, becoming familiar with and implementing the infrastructure necessary to comply with laws, rules and regulations applicable to new business activities and mitigating and protecting against corruption risks could be quite costly. Failure by us or our agents or distributors to comply with these laws, rules and regulations could delay our expansion into high-growth markets and could adversely affect our business.

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 October 2, 2015, we owned 486 patents issued in the United States and 235 patents issued throughout the rest of the world and had 426 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 “Critical Accounting Estimates” in MD&A and Note 9, “Commitments and Contingencies” of the Notes to the Consolidated Financial Statements, which discussions are incorporated herein by reference.

Financial Information about Geographic Areas

We do business globally with manufacturing, engineering, and development in the United States, Europe, China, India and Canada with sales and service operations and customers throughout the world. More than 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”)). 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. In fiscal year 2015, the U.S. Dollar strengthened against the Euro, the Japanese Yen and other foreign currencies which had a negative impact on our financial performance, compared to the year-ago period. We engage in currency hedging strategies to offset the effect of fluctuations in foreign currency exchange rate, but the protection offered by these hedges depends upon the timing of transactions, the effectiveness of the hedges, the number of transactions that are hedged and and forecast volatility.

We are also exposed to other economic, political and other risks inherent in doing business globally. For an additional discussion of these risks, see Item 1A, “Risk Factors.”

For a discussion of financial information about geographic areas, see Note 17, “Segment Information” of the Notes to the Consolidated Financial Statements and MD&A, which discussions are incorporated herein by reference.

Employees

We had approximately 7,300 full time and part-time employees worldwide, including approximately 3,800 in the United States and approximately 3,500 elsewhere at October 2, 2015. 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 represented by works councils or unions or 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; current reports on Form 8-K (including any amendments to those reports); and proxy statements. Our Code of Conduct, Corporate Governance Guidelines and the charters of the Audit Committee, Compensation and Management Development Committee, Ethics and Compliance Committee, Nominating and Corporate Governance Committee and Executive 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, 2015, are as follows:

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<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Position</th>
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<tbody>
<tr>
<td>Dow R. Wilson</td>
<td>56</td>
<td>President and Chief Executive Officer</td>
</tr>
<tr>
<td>Elisha W. Finney</td>
<td>54</td>
<td>Executive Vice President, Finance and Chief Financial Officer</td>
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<tr>
<td>Kolleen T. Kennedy</td>
<td>56</td>
<td>Executive Vice President and President, Oncology Systems</td>
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<tr>
<td>John W. Kuo</td>
<td>52</td>
<td>Senior Vice President, General Counsel and Corporate Secretary</td>
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<tr>
<td>Sunny S. Sanyal</td>
<td>51</td>
<td>Senior Vice President and President, Imaging Components Business</td>
</tr>
<tr>
<td>Clarence R. Verhoef</td>
<td>60</td>
<td>Senior Vice President, Finance and Corporate Controller</td>
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Dow R. Wilson was appointed President and Chief Executive Officer effective September 29, 2012. Mr. Wilson served as Corporate Executive Vice President and Chief Operating Officer from October 2011 through September 2012 and 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. During the previous 18 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 served on the board of directors of Saba Software, Inc. (an e-learning software provider) from August 2006 to March 2015 and as the lead independent director of that board from August 2011 to March 2013. Mr. Wilson was appointed to our Board of Directors effective September 29, 2012.

Elisha W. Finney was appointed Executive Vice President, Finance, in addition to being Chief Financial Officer, in February 2012. Ms. Finney served as Corporate Senior Vice President and Chief Financial Officer from January 2005 through January 2012 and as Corporate Vice President and Chief Financial Officer from April 1999 to January 2005. Ms. Finney has held various other positions, including Treasurer, during her 25 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 joined the board of Altera Corporation (a supplier of custom logic solutions) in August 2011.

Kolleen T. Kennedy was appointed Executive Vice President and President, Oncology Systems effective September 2014, and was our Senior Vice President and President, Oncology Systems from October 2011 to September 2014. 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.S. in Medical Physics from the University of Colorado.

John W. Kuo was appointed Senior Vice President, in addition to being General Counsel and Corporate Secretary, in February 2012. Prior to that, he served as Corporate Vice President and General Counsel from July 2005 through January 2012 and as Corporate Secretary since 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) and held senior legal positions at 3Com Corporation (a networking equipment provider). 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.

Sunny S. Sanyal was appointed Senior Vice President and President, Imaging Components Business in February 2014. From August 2010 to January 2014, Mr. Sanyal served as the Chief Executive Officer of T-System Inc. (an information technology solutions and services provider). Mr. Sanyal worked for McKesson Corporation (a healthcare services and information technology company) as the Chief Operating Officer of McKesson Provider Technologies from December 2006 to July 2010 and as the Group President of McKesson’s Clinical Information Systems division from April 2004 to December 2006. Previously, he held various management positions with GE Healthcare, Accenture and IDX Systems Corporation. Mr. Sanyal holds an M.B.A. degree from Harvard Business School, an M.S. degree in industrial engineering from Louisiana State University, and a B.E. degree in electrical engineering from the University of Bombay.

Clarence R. Verhoef was appointed Senior Vice President, Finance and Corporate Controller in August 2012. From May 2012 to August 2012, Mr. Verhoef served as the Company’s Vice President and Operations Controller, and from September 2006 to May 2012, he served as the Controller for the Company’s X-Ray Products business. Prior to joining the Company, from 2003 to September 2006, Mr. Verhoef served as the Chief Financial Officer of Techniscan Medical Systems Inc. (a developer of ultrasound technology), and prior to that held various finance management positions with GE Healthcare and other medical imaging equipment companies. Mr. Verhoef holds a B.S. degree in Finance from the University of Utah.
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 adversely affect our business operations. If any of the following risks or additional risks and uncertainties actually occur, our business, operating results, and financial condition could be adversely affected.

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

Rapid change and technological innovation characterize the markets in which we operate. Our Oncology Systems 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 (including linear accelerators, accessories, treatment systems and software products) and enhancements to and/or simplification of existing product lines. Our Oncology Systems products, including products such as EDGE and TrueBeam, are technologically complex and must keep pace with, if not be superior to, the products of our competitors in order to remain competitive. We are also expanding our software product lines and investing in the development of cloud and software-as-a-service (“SaaS”) solutions. Development and introduction of new software platforms and software delivery models, as well as different revenue models, can be highly complex and uncertain, both in our ability to develop and implement such platforms or models and in our customers’ acceptance of such platforms or models.

Our Imaging Components business, which sells primarily to a small number of imaging system OEM customers who use our products in their medical diagnostic, security and industrial imaging systems, must also continually introduce new products at competitive costs while also improving existing products with higher quality, lower costs and increased feature sets. Because this business competes in very price sensitive markets with other market players who are much larger and who may have “in-house” supplier of competing components, our ability to anticipate our customers’ demands, innovate and introduce new products at a competitive cost and improve quality, cost and features of our existing products is extremely critical to our success in this business. Our failure to do so can and has resulted in loss of customers and adverse impact to our financial performance. With a strong U.S. Dollar, our ability to meet our customers’ pricing expectations is particularly challenged and can result in erosion of product margin and market share.

We are investing in the growth of our Particle Therapy business, and expect that we will need to invest more to develop and commercialize new products and technology for this business. Accordingly, 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. In addition, because of the large footprint and high price of many proton therapy systems, including ours, there is increasing demand for development of a smaller, more compact proton therapy system. Other companies currently offer smaller, less expensive proton therapy systems, and our ability to compete with these companies may depend on our ability to timely develop new technologies to reduce the size and price of our system or provide additional features and functionality that our competitors do not.

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 such 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, which could adversely impact our revenues and operating results. In addition, certain costs, including installation and warranty costs, associated with new products may be proportionately greater than the costs associated with other products, and may therefore disproportionately adversely affect our gross and operating margins. If we are unable to lower these costs over time, our operating results could be adversely affected. 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 or long-term customer demands;
- prove the feasibility of new products;
- limit the time required from proof of feasibility to routine production;
- timely and efficiently comply with internal quality assurance systems and processes;
• limit the timing and cost of regulatory approvals;
• accurately predict and control costs associated with inventory overruns caused by phase-in of new products and phase-out of old products;
• price our products competitively and profitably;
• manufacture, deliver and install our products in sufficient volumes on time, and accurately predict and control costs associated with manufacturing, installation, warranty and maintenance of the products;
• appropriately manage our supply chain;
• manage customer acceptance and payment for products;
• manage customer demands for retrofits of both new and old products; and
• anticipate, respond to and compete successfully with competitors.

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 Quality System Regulation (“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 decide not 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.

**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 54%, 57% and 56% of our total revenues during fiscal years 2015, 2014 and 2013, 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. For example, we have aligned our resources to support sales and marketing efforts in emerging markets. We cannot be sure, however, that we will be able to meet our sales, service and support objectives or obligations in these international markets, or recover our investments. Our future results could be harmed by a variety of factors, including:

• currency fluctuations, such as the strengthening of the U.S. Dollar since the end of our fiscal year 2014, which has adversely affected our financial results and caused some customers to delay purchasing decisions or move to in-sourcing supply or migrate to lower cost alternatives or ask for additional discounts;
• the lower sales prices and gross margins usually associated with sales of our products in the international region, in particular emerging markets;
• the longer payment cycles associated with many foreign customers;
• difficulties in interpreting or enforcing agreements and collecting receivables through many foreign country’s legal systems;
• changes in the political, regulatory, safety or economic conditions in a country or region;
• the imposition by governments of additional taxes, tariffs, global economic sanctions programs (such as the Russia-Ukraine sanctions) or other restrictions on foreign trade;
• the longer periods from placement of orders to revenue recognition in the international region;
• any inability to obtain required export or import licenses or approvals;
• failure to comply with export laws and requirements, which may result in civil or criminal penalties and restrictions on our ability to export our products, particularly our industrial linear accelerator products;
• failure to obtain proper business licenses or other documentation, or to otherwise comply with local laws and requirements regarding marketing, sales, service or any other business we conduct in a foreign jurisdiction, which may result in civil or criminal penalties and restrictions on our ability to conduct business in that jurisdiction; and

• the possibility that it may be more difficult to protect our intellectual property in foreign countries.

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 October 2, 2015, approximately 98% of our cash and cash equivalents were held abroad. If these funds were repatriated to the United States, a portion of this amount 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 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, a change in the mix of particular tax jurisdictions within the international region, or a change in currency exchange rates, 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 to be or actually are remitted to the United States, in which case our financial results would be adversely affected. In addition, changes in the valuation of our deferred tax assets or liabilities, changes in tax laws or rates, changes in the interpretation of tax laws or other changes beyond our control could adversely affect our financial position and results of operations.

**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 revenues and expenses, and/or the profitability in U.S. Dollars of products and services that we provide in foreign markets. For example, since the fourth quarter of fiscal year 2014, the U.S. Dollar has strengthened significantly against the Euro and Japanese Yen, which adversely impacted our financial results in fiscal year 2015.

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 the hedges, the number of transactions that are hedged and forecast volatility. If our hedging strategies do not offset these fluctuations, our revenues, margins and other operating results may be adversely impacted. Furthermore, 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.

In addition, our hedging program is designed to hedge currency movements on a relatively short-term basis (typically up to the next twelve month period). Therefore, we are exposed to currency fluctuations over the longer term. 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, and in particular the strengthening of the U.S. Dollar since the fourth quarter of fiscal year 2014, 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. In addition, the negative impact of foreign currency exchange rates has caused some customers in our Imaging Components business to delay purchasing decisions or move to in-sourcing supply or migrate to lower cost alternatives or ask for additional discounts. Even if the U.S. Dollar weakens, these customers may continue using the alternative sources and demand for our products may not increase.

Changes in monetary or other policies here and abroad, including as a result of economic and or political instability, or in reaction thereto, would also likely affect foreign currency exchange rates. Furthermore, in the event that one or more European countries were to replace the Euro with another currency, our sales into these countries, or into Europe generally, would likely be adversely affected until such time as stable exchange rates are established.

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

The global economy has been impacted by a number of economic and political factors, including recently the Russia-Ukraine sanctions. In many markets, 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. This, in turn, has caused our customers to be more cautious with, and sometimes freeze, delay or dramatically reduce, purchases and capital project expenditures. Some countries have adopted and may in the future adopt austerity or stimulus programs that could positively or negatively affect our results from period to period, making it difficult for investors to compare our financial results. An uncertain economic environment may also disrupt supply or affect our service business, as customers’ constrained budgets may result in pricing pressure, extended warranty provisions and even cancellation of service contracts.

In addition, concerns over continued economic instability could make it more difficult for us to collect outstanding receivables. 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, the 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. 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, an existing currently marketed medical device obtain either 510(k) pre-market notification clearance or pre-market approval (“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 also require a new 510(k) clearance. Although manufacturers 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, and the PMA process is more complex than the 510(k) clearance process. 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, our devices have generally been subject to 510(k) clearance or exempt from 510(k) clearance. However, there are some in the regulatory field who believe that certain medical devices should be required to use the PMA approval process. If we were required to use the PMA process for future products or product modifications, it could delay or prevent release of the proposed products or modifications, which could harm our business.

Further, as we enter new businesses or pursue new business opportunities, such as radiosurgery and opportunities that require clinical trials, we become subject to additional laws, rules and regulations, including FDA and foreign rules and regulations that

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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 is 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. 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.

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 on a timely basis, 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 against us by competitors 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 (and decommissioning and removal) 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, agents 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;
- difficulty in obtaining product liability or operating insurance at a reasonable cost, or at all; and
- civil fines and criminal prosecutions.

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, including the 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, national and state laws regulate privacy and may regulate our use of data. Furthermore, HIPAA was amended by the HITECH Act to provide that 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 we may incur as the consequence of regulatory violations; consequently, we do not have insurance that would cover this type of liability.

**DISRUPTION OF CRITICAL INFORMATION SYSTEMS OR MATERIAL BREACHES IN THE SECURITY OF OUR PRODUCTS 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 produce our financial statements. There is an increasing threat of information security attacks that pose risk to companies, including Varian. Because the techniques used to obtain unauthorized access, or to sabotage systems, change frequently and generally are not recognized until launched against a target, we may be unable to anticipate these techniques or to implement adequate preventative measures. 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. Such security breaches could expose us to a risk of loss of information, litigation and possible liability to employees, customers and regulatory authorities. 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
Moreover, we manufacture and sell hardware products that rely upon software systems to operate properly and software that deliver treatment instructions and store confidential patient information, and both types of products often are connected to and reside within our customers' information technology infrastructures. While we have implemented security measures to protect both our hardware and software products from unauthorized access, these measures may not be effective in fully securing these products, particularly since techniques used to obtain unauthorized access, or to sabotage systems, change frequently and generally are not recognized until launched against a target. Additionally, we are developing and offering cloud and SaaS software products which reside upon and are hosted by third party providers. A security breach, whether of our products, of our customers' network security and systems or of third party hosting services could disrupt treatments occurring on our products, disrupt access to our customers' stored information, such as the patient treatment delivery instructions, and could lead to the loss of, damage to or public disclosure of our customers' stored information, including patient health information. Such an event could have serious negative consequences, including possible patient injury, regulatory action, 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.

**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 the CE mark is affixed, 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 and in other countries that recognize the CE mark. In September 2012, the European Commission adopted a Proposal for a Regulation of the European Parliament and of the Council on medical devices and a Proposal for a Regulation of the European Parliament and of the Council on in vitro diagnostic medical devices which will, once adopted by the European Parliament and by the Council, replace the existing three medical devices directives. Since negotiation by member states of the available drafts are still ongoing, no publication of the new directive is expected until 2016. The new proposal imposes stricter requirements for the placing in the market of medical devices as well as on the Notified Bodies. 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, including temporarily suspending our market authorizations or CE mark, 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 is 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 and agents 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, agents 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. laws, 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. New data protection legislation that will entail substantial changes to the current legal framework, some stricter than before, some less strict, is expected to be enacted by the EU Commission in 2015.

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 CARE 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 Care Act. The Affordable Care Act could adversely impact 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 law is a 2.3% excise tax on sales of most medical devices, which include our Oncology Systems and VPT products, which took effect on January 1, 2013. The Congressional Budget Office estimates that the total cost to the medical device industry could exceed $30 billion over ten years. This tax has had and may continue to have a negative impact on our gross margin.
In addition, discussions relating to the Affordable Care Act have included the possibility for bundled reimbursement payments and accountable care organizations ("ACOs"). ACOs and bundled payment programs were established by the Affordable Care Act to reward integrated, efficient care and allow providers to share in any savings they achieve through the coordination of care and meeting certain mandated quality standards. ACOs and the bundled payment programs have primarily focused on primary care. However, some customers appear to be developing new partnerships across clinical specialties to prepare for the possibility of operating in an ACO environment and bundled reimbursement payments. These and other elements of the Affordable Care Act, 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. We believe that growth of the radiation oncology market, which includes both traditional radiation therapy as well as proton therapy, in the United States is being adversely impacted as customers’ decision-making processes are complicated by the uncertainties surrounding the implementation of the Affordable Care Act and reimbursement rates for radiotherapy and radiosurgery, and that this uncertainty will likely continue into the next fiscal year and result in a high degree of variability of gross orders and revenue from quarter-to-quarter.

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 are also unable to predict what effect ongoing uncertainty surrounding federal and state health reform proposals 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 AND OTHER REIMBURSEMENTS AND CHANGES IN INSURANCE DEDUCTIBLES AND ADMINISTRATION 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, employers and third-party payors in the United States have become increasingly cost-conscious, with higher deductibles imposed or encouraged in many medical plans. The imposition of higher deductibles tends to restrain individuals from seeking the same level of medical treatments as they might seek if the costs they bear are lower, particularly in the medical diagnostic portion of our business. Third-party payors have also increased utilization controls related to the use of our products by healthcare providers.

Furthermore, there is no uniform policy on reimbursement among third-party payors, and we cannot be sure that third-party payors will reimburse our customers for procedures using our products that will enable us to achieve or maintain adequate sales and price levels for our products. Without adequate support from third-party payors, the market for our products may be limited.

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. In addition, discussions relating to the Affordable Care Act have included the possibility for bundled reimbursement payments and ACOs. Any significant cuts in reimbursement rates or changes in reimbursement methodology or administration for radiotherapy, radiosurgery, proton therapy or brachytherapy, or concerns or proposals regarding further cuts or changes in methodology or administration, 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.
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 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 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 equity ownership 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, and the Law “On the Fundamentals of Health Protection in the Russian Federation,” which became effective in January 2012. In general, there is a worldwide trend to strengthen anticorruption laws and their enforcement, and the healthcare industry and medical equipment manufacturers have been particular targets of these investigation and enforcement efforts. Any violation of these laws by us or our agents or distributors 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 2014 Corruption Perceptions Index measured the degree to which public sector corruption is perceived to exist in 174 countries/territories around the world, and found that nearly seventy percent 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 50, on a scale from 100 (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 mitigating and protecting against corruption risks could be quite costly. In addition, failure by us or our agents or distributors 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, directly and potentially indirectly, in countries where the public sector is perceived to be more or highly corrupt and will 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, we have conducted, and in the future expect to 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. For example, in June 2015, one of our foreign subsidiaries was charged by the Department for Investigation and Penal Action of Lisbon with alleged improper activities relating to three tenders of medical equipment in Portugal during the period of 2003 to 2009. We previously undertook an internal investigation of this matter and voluntarily disclosed the results of this investigation to the U.S. Department of Justice and the U.S. Securities and Exchange Commission. At this time, we are unable to predict the ultimate outcome of this matter but intend to defend it vigorously. An adverse outcome under any such proceeding, investigation or audit could subject us to fines, or criminal or other penalties, which could adversely affect our business and financial results.

Competition laws. Due to our competitive position in many jurisdictions, compliance with competition laws is of increased importance to us. Regulatory authorities under whose laws we operate may have enforcement powers that can subject us to sanctions, and can impose changes or conditions in the way we conduct our business. In addition, an increasing number of jurisdictions also provide private rights of action for competitors or consumers to seek damages asserting claims of anti-competitive conduct. Increased government scrutiny of our actions or enforcement or private rights of action could adversely affect our business or damage our reputation. In addition, we have conducted, and in the future expect to 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 OUR 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 and other situations where people may come into contact with radiation (for example, when our security and inspection 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 diagnoses of medical problems, the possibility for significant injury and/or death exists to the intended or unintended recipient of the delivery. 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. In addition, third party service providers could fail to adequately perform their obligations, which could subject us to further liability. 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. In connection with our products that collect and store patient treatment data, we may be liable for the loss or misuse of such private data, if those products fail or are otherwise defective.

Product liability actions are subject to significant uncertainty and may be expensive, time-consuming, and disruptive to our operations. For these and other reasons, we may choose to settle product liability claims against us, regardless of their actual merit. If a product liability action were finally determined against us, it could result in significant damages, including the possibility of punitive damages and our consolidated financial position, results of operations or cash flows could be materially adversely affected. Adverse publicity regarding any accidents or mistreatments, even ones that do not involve our products, could cause patients to be less receptive to radiotherapy or radiosurgery treatments, to question the efficacy of radiation therapy and radiosurgery and to seek other methods of treatment. Adverse publicity could also result in additional regulation of radiation therapy, radiosurgery, medical devices or the healthcare industry in general, and adversely affect our ability to promote, manufacture and sell our products. Both adverse publicity and increased regulatory activities could 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) or found to be so by a competent regulatory authority, we may be required to correct or recall the product and notify other regulatory authorities. The adverse publicity resulting from a correction or recall, however imposed, 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 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 operations.

**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. New competitors may enter our markets, and we have encountered new competitors as we have entered new markets such as radiosurgery, VMAT and proton therapy. Some of these competitors may have greater financial, marketing and other resources than we have. To compete successfully, we must provide technically superior, proven products that deliver more precise, cost-effective, high quality clinical outcomes, in a complete package of products and services, and 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. The shift in the proportion of sales within our international region towards emerging market countries, which typically have purchased less complex, lower-priced products compared to more developed countries, and which usually have stiffer price competition, could also adversely impact our results of operations. New competitors may also delay customer purchasing decisions as customers evaluate the products of these competitors along with ours, potentially extending our sales cycle and adversely affecting our gross orders.

In Imaging Components, 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. 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 an advantage in one or more significant areas, which may include lower product cost, better product quality and/or superior technology and/or performance.

With our security and inspection products, we compete with other OEM suppliers, primarily outside of the United States. The market for our X-ray tube and flat panel 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 and pricing pressure. Our ability to compete successfully depends, in part, on our ability to lower our product costs, develop and provide technically superior, proven products that deliver more precise, cost-effective, high quality clinical outcomes, including integration of technologies such as our On-Board Imager (“OBI”) for IGRT and our motion management technologies.

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 subject to, 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.

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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 a high level of training and education is required in order 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) making our software products easier to use and (iii) reducing setup and treatment times to increase patient throughput. We have emphasized an “open systems” approach that allows customers to “mix and match” our individual products, incorporate products from other manufacturers, share information with other systems or products and use the equipment for offering various methods of radiation and chemotherapy treatment. We have done this based on our belief that such interconnectivity will increase the acceptance and adoption of IMRT, IGRT and VMAT 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 oncology products manufactured by other companies, if we cannot do this, we may need to develop individual interfaces so that our products communicate correctly with the other company products. When other companies modify the design or functionality of their products, this may affect their compatibility with our products. In addition, when we improve our products, customers may be reluctant to adopt our new technology due to potential 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 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. For example, during September and October 2015, we filed several complaints in the U.S. and foreign courts and the U.S. International Trade Commission against Elekta AB and its subsidiaries alleging infringement of various patents relating to certain aspects of cone beam imaging, cone-beam gantries, volumetric modulated arc therapy, and MR-Linac. An unfavorable outcome in this or in any other 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 and other confidential 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. In the event that our proprietary or confidential information is misappropriated, our business and financial results could be adversely impacted. 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

There is a substantial amount of litigation over patent and other intellectual property rights in the industries in which we compete. 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. 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. For example, in September 2015, Elekta Ltd. and William Beaumont Hospital served the Company with a complaint alleging infringement of three patents related to certain aspects of cone beam imaging in conjunction with radiotherapy. This lawsuit is in the initial stages and we are not able to predict its ultimate outcome. We may incur substantial costs and expend significant management resources defending against these claims and our defense of these claims may ultimately not be successful. 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. 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 or appealing an infringement claim, we may be subject to significant damages and our consolidated financial position, results of operations or cash flows could be materially adversely affected. If actual liabilities significantly exceed our estimates regarding potential liabilities, our consolidated financial position, results of operations or cash flows could be materially adversely affected. We may also be subject to injunctions against development and sale of our products, the effect of which could be to materially reduce our revenues. Furthermore, a third party claiming infringement may not be willing to license its rights to us, and even if a third party rights holder is willing to do so, the amounts we might be required to pay under the associated royalty or license agreement could be significant. As such, we could decide to alter our business strategy or voluntarily cease the allegedly infringing actions rather than face litigation or pay a royalty, which could adversely impact our business and results of operations.

UNFAVORABLE RESULTS OF LEGAL PROCEEDINGS COULD MATERIALLY ADVERSELY AFFECT OUR FINANCIAL RESULTS

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 inside and outside the United States, arising in the ordinary course of our business or otherwise. We are currently involved in various legal proceedings and claims, including product liability claims and intellectual property claims (such as the current litigation with Elekta Ltd. and William Beaumont Hospital), that have not yet been fully resolved and additional claims may arise in the future. Legal proceedings are often lengthy, taking place over a period of years with interim motions or judgments subject to multiple levels of review (such as appeals or rehearings) before the outcome is final. Litigation is subject to significant uncertainty and may be expensive, time-consuming, and disruptive to our operations. For these and other reasons, we may choose to settle legal proceedings and claims, regardless of their actual merit.

If a legal proceeding were finally resolved against us, it could result in significant compensatory damages, and in certain circumstances punitive or trebled damages, disgorgement of revenue or profits, remedial corporate measures or injunctive relief imposed on us. If our existing insurance does not cover the amount or types of damages awarded, or if other resolution or actions taken as a result of the legal proceeding were to restrain our ability to market one or more of our material products or services, our consolidated financial position, results of operations or cash flows could be materially adversely affected. In addition, legal proceedings, and any adverse resolution thereof, can result in adverse publicity and damage to our reputation, which could adversely impact our business.

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, glass frames and various other components; and radiofrequency components, magnets and gantry hardware for proton therapy systems. If we lose any of these suppliers, if their operations were substantially interrupted, or if any of them failed to meet performance or quality
specifications, we may be required to obtain and qualify one or more replacement suppliers. Such an event 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 these products by the FDA or obtain 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. Furthermore, some of our single-source suppliers provide components for some 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 our affected product lines. Shortage of, and greater demand for, components and subassemblies could also increase manufacturing costs if the supply/demand imbalance increases the price of the components and subassemblies. Disruptions or loss of any of our limited- or sole-sourced 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 OR CHANGE IN SOURCE 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, iridium and copper for Oncology Systems and security and inspection products; 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. 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 or become unavailable or if prices increase, this could constrain our manufacturing of affected products, reduce our profit margins or otherwise adversely affect our business.

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the SEC has promulgated rules regarding disclosure of the presence in a company’s products of certain metals, known as “conflict minerals,” which are metals mined from the Democratic Republic of the Congo and adjoining countries, as well as procedures regarding a manufacturer’s efforts to identify the sourcing of those minerals from this region. Complying with these rules requires investigative efforts, which has and will continue to cause us to incur associated costs, and could adversely affect the sourcing, supply, and pricing of materials used in our products, or result in process or manufacturing modifications, all of which could adversely affect our results of operations.

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. In addition, we have seen and may continue to see integration of equipment and information systems among hospitals as they consolidate their networks. As customers consolidate and/or integrate, 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, or as groups of organizations combine their purchases. As a result, as orders increase in size and require more customer approvals, the purchasing cycle for our Oncology Systems products could lengthen. Both increased order size and extended purchasing cycles could cause our gross orders to be more volatile and less predictable. In addition, some customers appear to be developing new partnerships across clinical specialties to prepare for the possibility of operating in an ACO environment and the possibility of bundled reimbursement payments. Group purchasing organizations often focus on pricing as the determinant in making purchase decisions. A reduction in gross 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 IMAGING COMPONENTS 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, such as we have begun to see as a result of the recent strengthening of the U.S. Dollar, we could experience reductions in purchasing volume by, or loss of, one or more of these customers. Such a reduction or loss has had and will likely continue to have a material adverse effect on our Imaging Components business. In addition, economic uncertainties over the past few years, natural disasters and other matters beyond our control have made it difficult for our OEM customers to accurately forecast and plan future business activities. Such economic uncertainties and natural disasters, as well
as other factors, have previously impacted our Imaging Components business resulting in inventory reduction efforts and slowdowns in sales at some of these customers. Similar inventory adjustments and slowdowns in sales could occur in the future. Our agreements for imaging 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 these estimates.

**ORDERS FOR OUR SECURITY AND INSPECTION PRODUCTS TEND TO BE UNPREDICTABLE**

Our Imaging Components 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, as well as industrial applications. We generally sell security and inspection products to OEMs who incorporate our products into their inspection systems, which are then sold to customers 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 our security and inspection products 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. Orders for our security and inspection 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, the actual timing of sales and revenue recognition varies significantly. The market for border protection systems has slowed significantly and end customers, particularly in oil-based economies and war zones in which we have a significant customer base, are delaying system deployments or tenders and considering moving to alternative sources, resulting in a decline in the demand for security and inspection products which is expected to continue.

In addition, demand for our security and inspection products 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 economic conditions, as well as 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 growth remains sluggish in various jurisdictions and appears to be deteriorating in others, and as 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. These factors make the timing of orders, sales and revenues in this business more unpredictable and 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 treatment procedures such as IMRT, IGRT, VMAT, 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 the product. For example, the complex 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 devoted and will continue to devote significant resources on marketing and educational efforts to create awareness of IMRT, IGRT, VMAT 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 and effective use of our products in compliance with their operating procedures. Future products may not gain adequate market acceptance among physicians, patients and healthcare payors, even if we spend significant time and expense educating them about these products.

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

Our future success depends, to a great degree, on our ability to retain, attract, expand, integrate and train our management team and other key personnel, such as qualified engineering, service, sales, marketing and other 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 and train qualified personnel, we may not be able to maintain or expand our business. Additionally, if we are unable to retain key personnel, we may not be able to replace them readily or on terms that are reasonable, which also could hurt our business.

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

Many of 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 in a timely manner, 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.

WE MAY NOT REALIZE EXPECTED BENEFITS FROM ACQUISITIONS OF OR INVESTMENTS IN NEW BUSINESSES, PRODUCTS, OR TECHNOLOGIES, WHICH COULD 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, during fiscal year 2014, we acquired certain assets of Velocity and Transpire, and during fiscal year 2015, we acquired Claymount and a majority interest in MeVis. 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 current 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 experienced with our proton therapy systems, or cause us to increase our expenses related to research and development, either of which could adversely 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 into a business that lacks them. It is also possible that an acquisition could increase our risk of litigation, as a third party may be more likely to assert a legal claim following an acquisition because of perceived deeper pockets or perceived greater value of a claim. 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 the scientific research instruments business that we acquired as part of our acquisition of ACCEL GmbH, 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. 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.

If we acquire a business, we allocate the total purchase price to the acquired businesses’ tangible assets and liabilities, identifiable intangible assets and liabilities 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.

Additionally, we have investments in privately held companies that are subject to risk of loss of investment capital. These investments are inherently risky, in some instances because the markets for the technologies or products these companies have under development may never materialize. If these companies do not succeed, we could lose some or all of our investment in these companies. For example, in fiscal year 2014, we recorded a charge relating to the impairment of a portion of a privately-held equity investment when we became aware of certain indicators of impairment.

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 particle therapy. There are substantial risks and uncertainties associated with new lines of business, 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 could have a material adverse effect on 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, including Siemens AG, for sales and service of our products. 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 GROSS 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 gross orders, revenues and margins, from period to period. Drivers of orders include the introduction and timing of announcement 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, or reductions thereof, 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 it is especially true with our proton therapy products because of the high cost of the proton therapy 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. Economic uncertainty also tends to extend the purchasing cycle 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 and the placement of orders even further. When orders are placed, installation is accomplished and the revenues recognized affect our quarterly results.

Once orders are received and booked into backlog, factors that may affect whether these orders become revenue (or are cancelled or deemed dormant and reflected as a reduction in the net order amounts) and the timing of revenue include:

- delay in shipment due, for example, to an unanticipated construction delay at a customer location where our products are to be installed, cancellations or reschedulings by customers, extreme weather conditions, natural disasters, port strikes or other labor actions;
- a challenge to a bid award for one or more of our products;
- delay in the installation and/or acceptance of a product;
- 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 necessary 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 our international region as a whole, by regions within the overall region, as well as by individual countries (notably those in emerging markets);
• fluctuation in our effective tax rate, which may or may not be known to us in advance;
• changes to our organizational structure, which may result in restructuring or other charges;
• 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 imaging components;
• the unfavorable outcome of any litigation or administrative proceeding or inquiry, as well as ongoing costs associated with legal proceedings; 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 lower than 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 our gross orders and backlog on a quarterly and annual basis. It is important to understand that, unlike revenues, gross orders and backlog are not governed by GAAP, and are not within the scope of the audit conducted by our independent registered public accounting firm; therefore, investors should not interpret our gross orders or backlog in such a manner. Also, for the reasons set forth above, our gross orders and backlog cannot necessarily be relied upon as accurate predictors of future revenues. Order cancellation or delays in customer purchase decisions or delivery dates will reduce our backlog and future revenues, and we cannot predict if or when orders will mature into revenues. Particularly high levels of cancellations in one period will make it difficult to compare our operating results for other periods. Our gross 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 our VPT business 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 widely adopted and future developments may not be adopted as quickly as others.

Since proton therapy projects are generally large, highly customized and more complex than projects in our Oncology Systems radiotherapy business, planning for these projects takes more of our time and uses more of our resources. Many of the components used in proton therapy equipment require long lead times, which may require an increase in our inventory levels. 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. The construction of a proton therapy facility requires significant capital investment and may involve complex project financing. Consequently, this business is vulnerable to deterioration in 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 have for the Scripps Proton Therapy Center, Maryland Proton Therapy Center and The New York Proton Center) or make payment concessions in their agreements with us, which could impact our operating results. Challenges or delays in obtaining financing or commencing treatment could also impact the viability of one or more of our customers as a going concern. Changes in reimbursement rates for proton therapy treatments, or uncertainty regarding these reimbursement rates, such as we experienced in 2012 with the reductions to reimbursement rates for hospital based proton therapy centers in the United States by CMS, can affect growth or demand for our VPT products and services.

We compete for many proton therapy system sales through tenders, where parties compete on price and other factors. Many companies sell their products at a lower price than we do. If we are unable to lower our prices or our customers are not willing to pay for additional features and functionality that we may provide, there is a risk we will lose sales, and if we lower our prices to gain business, our margins and other financial results may suffer. Further, the award of certain proton therapy system orders
may be subject to challenge by third parties, which can make these orders more unpredictable than orders for other products. Because an order for a proton therapy system can be relatively large and complex, the sales and customer decision cycles for proton therapy projects may take several years, and an order in one fiscal period (or the cancellation of an order as a result of bid challenge or otherwise) will cause our gross orders to vary significantly, making comparisons between fiscal periods more difficult. We expect that a limited number of customers will account for a substantial portion of VPT’s business for the foreseeable future. In instances where one customer undertakes multiple proton center projects, an adverse event with respect to one project could cause an adverse event with respect to the other projects, which could adversely impact our operating results.

Our estimates as to future operating results include certain assumptions about the results of VPT’s business. If we are incorrect in our assumptions, our financial results could be materially and adversely affected. It is possible that VPT could perform significantly below our expectations due to a number of factors that cannot be predicted with certainty, including future market conditions, revenue growth rates, and operating margins. These factors could adversely impact VPT’s ability to meet its projected results, which could cause a portion or all of the goodwill of VPT to become impaired. As of October 2, 2015, the goodwill of VPT was $50.0 million. If we determine that VPT’s goodwill becomes impaired, we would be required to record a charge that could have a material adverse effect on our results of operations in such period.

**OUR VPT BUSINESS MAY SUBJECT US TO INCREASED RISK AND POTENTIAL LIABILITY**

VPT’s 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 or delays in delivering 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 have in the past requested and may in the future request 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. Since the cost of each proton therapy center project will often exceed $100 million, the amount of potential liability and potential for financial loss would likely 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 or expensive. 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. These 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 credit facility with debt outstanding 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 Financial Accounting Standards Board (“FASB”), American Institute of Certified Public Accountants, the SEC 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 ones regarding revenue recognition, than we have applied in past periods. Currently, we recognize revenues for our proton therapy systems and proton therapy commissioning contracts and for certain highly customized image detection systems in our Imaging Components business under contract accounting rules, which affects the timing of revenue recognition. We could be required to apply contract accounting rules to other businesses in the future. Under contract accounting rules, the use of 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, estimates 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 had done with the revenues associated with the Scripps Proton Therapy Center in the earlier stages of the project lowers our gross margins and makes it more difficult to compare our financial results from quarter to quarter. In addition, if we were to recognize revenues for our proton therapy systems and services under either the completed contract method or outside of contract accounting rules altogether, we would defer revenue until a contract is completed or substantially completed. This may cause our results of operations to fluctuate from period to period.

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.

**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, Maryland Proton Therapy Center and the New York Proton Center, and we may provide or be requested to provide financing to other potential VPT customers in the future. Providing such financing could adversely affect our financial results, since we cannot provide 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 facilitate a refinancing, 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 additional portion of our loan can be syndicated to third parties, or that the loan facility can be successfully refinanced upon the maturity of the loan. If a borrower does not have the financial means to pay off its debts, and if we cannot recover the amounts due us from the sale of any collateral, we may be required to write off all, or a portion of the loan, which would adversely affect our financial results.

In addition, in some circumstances we offer longer or extended payment terms for qualified customers in VPT or 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 October 2, 2015, customer contracts with remaining terms of more than one year amounted to approximately six percent 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. Concerns over continued economic instability could also make it more difficult for us to collect outstanding receivables. This may result in an increase in payment defaults and uncollectible accounts, or could cause us to increase our bad debt expense, which would adversely 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.

**PROVISIONS OF DELAWARE LAW AND OUR CHARTER DOCUMENTS COULD BE INSUFFICIENT TO DETER A HOSTILE TAKEOVER; AND ACTIONS OF ACTIVIST STOCKHOLDERS COULD ADVERSELY AFFECT OUR BUSINESS**

Certain provisions of Delaware law and of our certificate of incorporation and by-laws could deter a hostile takeover, while others could be insufficient to deter a hostile takeover. Our stockholder rights plan expired in December 2008, and we did not...
renew it. In addition, in February 2014 our stockholders approved, and we filed an amendment to our certificate of incorporation to declassify our Board of Directors commencing in 2016. Both of these changes reduced our ability to defend against a hostile takeover. The remaining provisions of Delaware law and of our charter documents may not be effective in defending against a hostile takeover or attack by an activist stockholder that may not be in the best interest of all of our shareholders, which could distract our management and adversely affect our business. In addition, we may be subject to one or more campaigns by stockholders who desire to increase stockholder value in the short term. Any such campaign could be costly and time-consuming, disrupt our operations and divert the attention of management and our employees from executing on our strategic goals, any of which could have an adverse effect on our business.

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 directives that may lead to restrictions on the use of certain hazardous substances or other regulated substances in some of our products sold there. These directives, 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.

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, hurricane, 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 occurred following the March 2011 tsunami in Japan. 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 ebola, 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.

WE WORK IN INTERNATIONAL LOCATIONS WHERE THERE ARE HIGH SECURITY RISKS, WHICH COULD RESULT IN HARM TO OUR EMPLOYEES OR CONTRACTORS OR CAUSE US TO INCUR SUBSTANTIAL COSTS

We work in some international locations where there are high security risks, which could result in harm to our employees and contractors or substantial costs. Some of our services are performed in or adjacent to high-risk locations where the country or location and surrounding area is suffering from political, social, or economic issues; war or civil unrest, or has a high level of criminal or terrorist activity. In those locations where we have employees or operations, we may incur substantial costs to maintain the safety of our personnel. Despite these precautions, the safety of our personnel in these locations may continue to
be at risk, and we may in the future suffer the loss of employees and contractors, which could harm our business and operating results.

**Item 1B. Unresolved Staff Comments**

None.

**Item 2. Properties**

As of October 2, 2015, we owned and leased a total of approximately 2.5 million square feet of floor space for 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 GTC are located in Palo Alto, California, on approximately 30 acres of land under leasehold which expires in 2056. We own these facilities which contain approximately 481,000 square feet of space. In Crawley, England, we own approximately 2 acres of land and approximately 48,000 square feet of space used for office and manufacturing. In Beijing, China, we have approximately 5 acres of land under leasehold that expires in 2056, and own approximately 147,000 square feet of space used for office and manufacturing. Our Imaging Components business is primarily located in Salt Lake City, Utah, where we own approximately 38 acres of land and approximately 341,000 square feet of space used for office and manufacturing. Our Imaging Component business has a facility in Liverpool, New York, where we own 3 acres of land and approximately 27,000 square feet of space used for light assembly manufacturing. In Las Vegas, Nevada, we own approximately 12 acres of land and approximately 191,000 square feet of space where we manufacture our security and inspection products and have Oncology Systems customer service and support operations. The balance of our remaining facilities are leased to support our business operations worldwide.

Substantially all of this space is fully utilized for its intended purpose. We believe that our facilities and equipment are generally well maintained, in good operating condition and adequate for our present operations.

**Item 3. Legal Proceedings**

In 1999, we transferred our instruments business to Varian, Inc. (“VI”) and our semiconductor equipment business to Varian Semiconductor Equipment Associates, Inc. (“VSEA”) and subsequently spun off VI and VSEA, which resulted in a non-cash dividend to our stockholders (the “Spin-offs”). 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 9, "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 or otherwise and, from time to time, acquired as part of business acquisitions that we make. For a detailed discussion of current material legal proceedings, see Note 9, "Commitments and Contingencies" of the Notes to the Consolidated Financial Statements, which is by this reference incorporated herein.

**Item 4. Mine Safety Disclosures**

Not applicable.
PART II

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 2015 and 2014.

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<th>Fiscal Year 2015</th>
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<th>Low</th>
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<tr>
<td>First Quarter</td>
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<tr>
<td>Second Quarter</td>
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<tr>
<td>Third Quarter</td>
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<tr>
<td>Fourth Quarter</td>
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<table>
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<tr>
<th>Fiscal Year 2014</th>
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<tr>
<td>Fourth Quarter</td>
<td>$87.85</td>
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Since the Spin-offs in 1999, 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 credit agreement contains 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 7, "Borrowings" of the Notes to the Consolidated Financial Statements for more information.

As of November 13, 2015, there were 2,201 holders of record of VMS common stock.
This graph shows the total return on VMS common stock and certain indices from October 1, 2010 until the last day of fiscal year 2015.

**COMPARISON OF FIVE YEAR CUMULATIVE TOTAL RETURN***


*$100 invested on October 1, 2010 in stock or index, including reinvestment of dividends. Indexes are calculated based on our fiscal month-end.

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</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.
**Share 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 2015.

<table>
<thead>
<tr>
<th>Period</th>
<th>Total Number of Shares Purchased</th>
<th>Average Price Paid Per Share</th>
<th>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</th>
<th>Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 1, 2015 – August 28, 2015 (2)(3)</td>
<td>550,989</td>
<td>$85.03</td>
<td>550,989</td>
<td>1,553,995</td>
</tr>
<tr>
<td>August 29, 2015 – October 2, 2015</td>
<td>130,844</td>
<td>$80.45</td>
<td>130,844</td>
<td>1,425,151</td>
</tr>
<tr>
<td>Total</td>
<td>1,500,000</td>
<td>$85.64</td>
<td>1,500,000</td>
<td>1,425,151</td>
</tr>
</tbody>
</table>

(1) In August 2014, the VMS Board of Directors authorized a repurchase of an additional 6,000,000 shares of VMS common stock from August 15, 2014 through December 31, 2015. In November 2015, the VMS Board of Directors authorized the repurchase of an additional 8,000,000 shares of VMS common stock through December 31, 2016. Share repurchases may be made in the open market, in privately negotiated transactions including accelerated share repurchase programs, or in Rule 10b5-1 share repurchase plans, and also may be made from time to time or in one or more larger blocks.

(2) Includes 208,024 shares of VMS common stock received upon settlement of accelerated share repurchase agreement. See Note 11, "Stockholders' Equity" of the Notes to the Consolidated Financial Statements for further discussion.

(3) The preceding table excludes 1,407 shares of VMS common stock that were tendered to VMS in satisfaction of tax withholding obligations upon the vesting of restricted stock units granted under our employee stock plans.
### Summary of Operations:

<table>
<thead>
<tr>
<th>(In millions, except per share amounts)</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
<th>2012</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenues</td>
<td>$3,099.1</td>
<td>$3,049.8</td>
<td>$2,942.9</td>
<td>$2,807.0</td>
<td>$2,596.7</td>
</tr>
<tr>
<td>Earnings from continuing operations before taxes</td>
<td>554.7</td>
<td>574.5</td>
<td>612.0</td>
<td>595.9</td>
<td>588.7</td>
</tr>
<tr>
<td>Taxes on earnings</td>
<td>142.7</td>
<td>170.8</td>
<td>173.8</td>
<td>168.9</td>
<td>180.1</td>
</tr>
<tr>
<td>Earnings from continuing operations</td>
<td>412.0</td>
<td>403.7</td>
<td>438.2</td>
<td>427.0</td>
<td>408.6</td>
</tr>
<tr>
<td>Loss from discontinued operations, net of taxes (1)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(9.7)</td>
</tr>
<tr>
<td>Net earnings</td>
<td>412.0</td>
<td>403.7</td>
<td>438.2</td>
<td>427.0</td>
<td>398.9</td>
</tr>
<tr>
<td>Less: Net earnings attributable to noncontrolling interests</td>
<td>0.5</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Net earnings attributable to Varian</td>
<td>$411.5</td>
<td>$403.7</td>
<td>$438.2</td>
<td>$427.0</td>
<td>$398.9</td>
</tr>
<tr>
<td>Net earnings (loss) per share attributable to Varian – basic</td>
<td>$4.13</td>
<td>$3.88</td>
<td>$4.04</td>
<td>$3.83</td>
<td>$3.50</td>
</tr>
<tr>
<td>Continuing operations</td>
<td>$4.13</td>
<td>$3.88</td>
<td>$4.04</td>
<td>$3.83</td>
<td>$3.50</td>
</tr>
<tr>
<td>Discontinued operations (1)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(0.08)</td>
</tr>
<tr>
<td>Net earnings per share</td>
<td>$4.13</td>
<td>$3.88</td>
<td>$4.04</td>
<td>$3.83</td>
<td>$3.42</td>
</tr>
<tr>
<td>Net earnings (loss) per share attributable to Varian – diluted</td>
<td>$4.09</td>
<td>$3.83</td>
<td>$3.98</td>
<td>$3.76</td>
<td>$3.44</td>
</tr>
<tr>
<td>Continuing operations</td>
<td>$4.09</td>
<td>$3.83</td>
<td>$3.98</td>
<td>$3.76</td>
<td>$3.44</td>
</tr>
<tr>
<td>Discontinued operations (1)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(0.08)</td>
</tr>
<tr>
<td>Net earnings per share</td>
<td>$4.09</td>
<td>$3.83</td>
<td>$3.98</td>
<td>$3.76</td>
<td>$3.36</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>$1,142.1</td>
<td>$1,292.5</td>
<td>$1,544.2</td>
<td>$934.0</td>
<td>$728.7</td>
</tr>
<tr>
<td>Total assets</td>
<td>3,600.7</td>
<td>3,357.3</td>
<td>3,468.5</td>
<td>2,878.7</td>
<td>2,498.8</td>
</tr>
<tr>
<td>Long-term debt (including current maturities)</td>
<td>387.5</td>
<td>437.5</td>
<td>506.3</td>
<td>6.3</td>
<td>16.1</td>
</tr>
<tr>
<td>Short-term borrowings</td>
<td>108.4</td>
<td>—</td>
<td>—</td>
<td>155.0</td>
<td>181.4</td>
</tr>
<tr>
<td>Total equity</td>
<td>$1,726.3</td>
<td>$1,616.4</td>
<td>$1,713.8</td>
<td>$1,509.8</td>
<td>$1,243.9</td>
</tr>
</tbody>
</table>

(1) The sale of Research Instruments was completed in fiscal year 2009. We classified the operating results of Research Instruments as a discontinued operation in the Consolidated Statements of Earnings. The net loss of $9.7 million was reported in discontinued operations for fiscal year 2011. In fiscal years 2015, 2014, 2013 and 2012, we did not recognize any income or losses and did not have any revenues from discontinued operations.
Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations

Overview

Our operations are currently grouped into two reportable operating segments: Oncology Systems and Imaging Components. Our GTC and VPT business are reflected in the “Other” category because these operating segments do not meet the criteria of a reportable operating segment. The operating segments were determined based on how our Chief Executive Officer, who is our CODM, views and evaluates our operations. The CODM allocates resources to and evaluates the financial performance of each operating segment primarily based on operating earnings.

Total revenues increased 2%, gross margin decreased 1.3 percentage points, net earnings attributable to Varian increased 2%, and diluted net earnings per share increased 7% in fiscal year 2015 over fiscal year 2014. During fiscal year 2015, operating expenses included a $13.3 million charge for restructuring programs, as compared to fiscal year 2014 where operating expenses included a $25.1 million charge for a litigation settlement and a $7.7 million charge relating to the impairment of Augmenix. Our effective tax rate decreased to 25.7% in fiscal year 2015 from 29.7% in fiscal year 2014. We repurchased 4.8 million shares of VMS common stock totaling $422.0 million in fiscal year 2015.

Gross orders were flat in Oncology Systems, and decreased 16% in Imaging Components in fiscal year 2015, as compared to fiscal year 2014. We also recorded gross orders of $317.2 million in the “Other” category in fiscal year 2015, as compared to $120.4 million in fiscal year 2014. Our backlog at the end of fiscal year 2015 was $3.5 billion, or 10% higher, as compared to the end of fiscal year 2014.

In order to assist with the assessment of how our underlying businesses performed, we compare the percentage change in revenues and gross orders from one period to another, excluding the effect of foreign currency fluctuations (i.e., using constant currency exchange rates). To present this information on a constant currency basis, we convert current period revenues and gross orders in currencies other than U.S. Dollars into U.S. Dollars using the comparable prior period’s average exchange rate.

For fiscal year 2015, the U.S. Dollar was stronger against the Euro, the Japanese Yen and other foreign currencies, as compared to fiscal year 2014, which had a significant unfavorable impact on our revenues and gross orders. Due to the unfavorable foreign currency exchange rate fluctuations, total revenues and Oncology Systems gross orders were negatively impacted in fiscal year 2015 by approximately $138 million and $141 million, respectively, as compared to fiscal year 2014. In fiscal year 2015, our total revenues and Oncology Systems gross orders both increased 6% in constant currency, as compared to fiscal year 2014. We expect that significant fluctuations of the Euro, the Japanese Yen and other foreign currencies against the U.S. Dollar will continue to cause variability in our financial performance.

Beginning in the first quarter of fiscal year 2015, our Rest of World region was consolidated into The Americas, EMEA and APAC. The Americas includes North America (primarily United States and Canada) and Latin America (previously reported within “Rest of World”). EMEA includes Europe, Russia, the Middle East, India and Africa. APAC includes Asia (previously reported separately as “Asia”) and Australia (previously reported within “Rest of World”). Prior years’ amounts have been reclassified to conform to the current year’s presentation.

Oncology Systems. Our largest business segment is Oncology Systems, which designs, manufactures, sells and services hardware and software products for treating cancer with conventional radiation therapy and advanced treatments such as, IMRT, IGRT, VMAT, SRS, SBRT and brachytherapy, as well as informatics software for information management, clinical knowledge exchange, patient care management, practice management and decision-making support for comprehensive cancer clinics, radiotherapy centers and medical oncology practices.

Our primary goal in the Oncology Systems business is to promote the adoption of more advanced and effective cancer treatments. In our view, the fundamental market forces that drive long-term growth in our Oncology Systems business are the rise in cancer cases; technology advances and product developments that are leading to improvements in patient care; customer demand for the more advanced and effective cancer treatments that we enable; competitive conditions among hospitals and clinics to offer such advanced treatments; continued improvement in safety and cost efficiency in delivering radiation therapy; and underserved medical needs outside of the United States. Over the last few years, we have seen a greater percentage of Oncology Systems gross orders and revenues coming from emerging markets within our international region, which typically purchase lower-priced products, which generally have lower gross margin percentages, compared to developed markets. We have also seen an increased portion of gross orders and revenues coming from services and software licenses, both of which have higher gross margin percentages than our hardware products. We have also been investing a higher portion of our Oncology Systems research and development budget in software and software-related products.
The radiation oncology market in North America is largely characterized by replacements of older machines, with periodic increases in demand driven by the introduction of new technologies. 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 VMAT tend to drive demand for radiotherapy products, large changes in reimbursement rates or reimbursement structure can affect customer demand and cause market shifts. We do not know what impact the Affordable Care Act in the United States will have on long-term growth or demand for our products and services. We believe, however, that growth of the radiation oncology market in the United States is being impacted as customers’ decision-making processes are complicated by the uncertainties surrounding the Affordable Care Act and reimbursement rates for radiotherapy and radiosurgery, and that this uncertainty will likely continue into the next fiscal year and result in a high degree of variability of gross orders and revenues from quarter-to-quarter. We also believe that the Affordable Care Act, Accountable Care Organizations and bundled payment arrangements are causing healthcare providers to re-evaluate their business models and we are seeing increased consolidation of hospitals and clinics and more integration of systems and equipment across multi-site healthcare networks, which is impacting transaction size, timing and purchasing processes, and also contributing to the increased business variability.

In the radiation oncology markets outside of North America, we expect the long-term market growth of our EMEA region will be mixed. In APAC, we expect China to lead longer term regional growth, off-setting a slower Japanese market. Our long-term outlook for Latin America remains healthy. Overall, we believe the longer-term global radiation oncology market can grow, on average and in constant currencies, in the mid-single-digit range.

In September 2015, we purchased certain assets comprising a business from a sole proprietor for treatment planning software tools that will enhance both planning efficiency and treatment plan quality and allow oncologists to quickly adjust their intended dose distributions ahead of the treatment planning process. The total purchase price of the acquisition was $27.0 million. See Note 15, “Business Combinations” of the Notes to the Consolidated Financial Statements for additional information.

In May 2015, we entered into a strategic alliance with FlatIron to develop the next generation of cloud-based oncology informatics products, leveraging our expertise in radiation oncology and FlatIron’s expertise in medical oncology. The alliance intends to enable software for an integrated cloud-based oncology information product suite.

Oncology Systems total revenues were flat in fiscal year 2015, as compared to fiscal year 2014. Oncology Systems gross margin percentage decreased 1.0 percentage points in fiscal year 2015 from fiscal year 2014. Oncology Systems gross margins were flat in fiscal year 2015, as compared to fiscal year 2014, with an increase of 3% from North America, offset by a decrease of 2% from our international regions.

**Imaging Components**. Our Imaging Components business segment designs, manufactures, sells and services X-ray imaging components for use in a range of applications, including radiographic or fluoroscopic imaging, mammography, special procedures, computed tomography, computer aided diagnostics, and industrial applications. We provide a broad range of X-ray imaging components including X-ray tubes, flat panel digital image detectors, high voltage connectors, image processing software and workstations, ionization chambers and automatic exposure control systems. Our Imaging Components business segment also designs, manufactures, sells and services security and inspection products, which include 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. We continue to view the long-term fundamental growth driver for this business to be the ongoing success of key X-ray imaging OEMs that incorporate our products into their medical diagnostic, dental, veterinary, security and industrial imaging systems. Orders and revenues for our security and inspection 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.

Our success in Imaging Components depends upon our ability to anticipate changes in our markets, the direction of technological innovation and the demands of our customers. A significant portion of our Imaging Components customers are outside of the United States and in fiscal year 2015 demand for Imaging Components products was negatively impacted by pricing pressures resulting from the strengthening of the U.S. Dollar. Because the products in Imaging Components are generally priced in U.S. Dollars, some customers have asked for additional discounts, delayed purchasing decisions, or considered moving to insourcing supply of such components, or migrating to lower cost alternatives. We expect that a strong U.S. Dollar will negatively impact demand and pricing for Imaging Component products. The market for border protection systems has slowed significantly and end customers, particularly in oil-based economies and war zones in which we have a significant customer base, are delaying system deployments or tenders and considered moving to alternative sources, resulting in a decline in the demand for security and inspection products which is expected to continue.
In August 2015, we closed the acquisition of Claymount, a Netherlands-based supplier of components and subsystems for X-ray imaging equipment manufacturers. We integrated Claymount into our X-ray imaging tubes and flat panel products reporting unit to enhance its ability to support a continuing industry-wide transition from analog to digital X-ray imaging. The total purchase price of the acquisition was $58.0 million.

In April 2015, we completed the acquisition of 73.5% of the then outstanding shares of MeVis, a public company based in Bremen, Germany that provides image processing software and services for cancer screening. The total purchase price of the acquisition was $25.5 million.

See Note 15, "Business Combinations" of the Notes to the Consolidated Financial Statements for further discussion.

In fiscal year 2015, Imaging Components revenues decreased 7% and gross orders decreased 16% over fiscal year 2014. Imaging Components gross margin percentage decreased 1.2 percentage points for fiscal year 2015 over fiscal year 2014.

Other. The “Other” category is comprised of VPT and the operations of GTC.

VPT 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. GTC is our scientific research facility.

The “Other” category revenues and gross orders increased $98.5 million and $196.8 million, respectively, in fiscal year 2015, as compared to fiscal year 2014.

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.

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, impairment of investments and allowance for notes receivable, valuation of inventories, assessment of recoverability of goodwill and intangible assets, valuation of warranty obligations, assessment of loss contingencies, 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

Our revenues are derived primarily from the sale of hardware and software products, and services from our Oncology Systems, Imaging Components and VPT businesses. We recognize revenues net of any value added or sales tax and net of sales discounts.

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.

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 are 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.

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, readiness of customers’ facilities for installation, installation requirements, availability of products or customer acceptance terms. If shipments or installations 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.

Service revenues include revenues from hardware service contracts, software service agreements, bundled support arrangements, paid services and trainings, and parts that are sold by our service department. Revenues allocated to service contracts are generally recognized ratably over the period of the related contracts.

In addition, revenues related to proton therapy systems and proton therapy system commissioning contracts are recognized in accordance with contract accounting. We recognize contract revenues under the percentage-of-completion method which 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, we recognize revenues under the percentage-of-completion method based on a zero profit margin until more precise estimates can be made. If and when we can make more precise estimates, revenues and costs of revenues 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.

Share-based Compensation Expense

We grant restricted stock units, deferred stock units, performance units, and stock options to employees and permit employees to purchase shares under the VMS employee stock purchase plan. 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. We value our performance units using the Monte Carlo simulation model. The determination of fair value of share-based payment awards on the date of grant under both the Black-Scholes option-pricing model and the Monte Carlo simulation model is affected by VMS’s stock price, as well as the input of other subjective assumptions, including the expected terms of share-based awards and the expected price volatilities of shares of VMS common stock and peer companies that are used to assess certain performance targets over the expected term of the awards, and the expected dividend yield of shares of VMS common stock.

The expected term of our stock options is based on the observed and expected time to post-vesting exercise and post-vesting cancellations of stock options by our employees. We use a blended volatility in deriving the expected volatility assumption for our stock options. 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. In determining the grant date fair value of our performance units, historical volatilities of shares of VMS common stock, as well as the shares of common stock of peer companies, were used to assess certain performance targets. The risk-free interest rate assumption is based upon observed interest rates appropriate for the term of our stock awards. 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, as well as the probability that certain performance conditions that affect
the vesting of performance units will be achieved, and recognize expense only for those awards expected to vest. If the actual forfeiture rate and/or the actual number of performance units that vest based on achievement of performance conditions are materially different from our estimates, the share-based compensation expense could be significantly different from what we have recorded in the current period.

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 and for security and inspection products, 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.

Impairment of Investments and Allowance for Notes Receivable

We recognize an impairment charge when the declines in the fair values of our available-for-sale investments below their cost basis are determined to be other than temporary impairments (“OTTI”). Our available-for-sale investments primarily include CPTC loans and other corporate debt securities. We monitor our available-for-sale investments for possible OTTI on an ongoing basis. When there has been a decline in fair value of a debt security below the amortized cost basis, we recognize OTTI if: (i) we have the intent to sell the security; (ii) it is more likely than not that we will be required to sell the security before recovery of the entire amortized cost basis; or (iii) we do not expect to recover the entire amortized cost basis of the security. We assess the fair value of the CPTC loans, which is classified in the level 3 fair value hierarchy based on the income approach by using the discounted cash flow model with key assumptions that include discount rates corresponding to the terms and risks associated with the loans to CPTC (see Note 3, "Fair Value" of the Notes to the Consolidated Financial Statements).

We also have investments in privately-held companies, some of which are in the startup or development stages. We monitor these investments for events or circumstances indicative of potential impairment, and we make appropriate reductions in carrying values if we determine that an impairment charge is required, based primarily on the financial condition, near-term prospects and recent financing activities of the investee. These investments are inherently risky because the markets for the technologies or products these companies are developing are typically in the early stages and may never materialize.

At times, we advance notes to third parties, including our customers. We assess these notes for collectibility and regularly review them for allowance by considering internal factors such as historical experience, credit quality, age of the receivable balances as well as external factors such as economic conditions that may affect the note holder's ability to pay.

Our ongoing consideration of all the factors described above could result in impairment charges in the future, which could adversely affect our operating results.

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. 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.

We evaluate goodwill for impairment at least annually or whenever an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying amount. The evaluation includes consideration of qualitative factors including industry and market considerations, overall financial performance, and other relevant events and factors affecting the reporting unit. If we determine that a quantitative analysis is necessary, 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 a combination of income and market approaches. The income approach is based on the present value of estimated future cash flows of the reporting units and the market approach is based on a market multiple calculated for each business unit based on market data of other companies engaged in similar business. 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.

We have four reporting units with goodwill: (i) Oncology Systems, (ii) X-ray tubes and flat panel products, (iii) Security and inspection products, and (iv) VPT. For all four reporting units, based upon the most recent annual goodwill analysis that we performed as of the end of the third quarter of fiscal year 2015, either step one of the impairment test was not completed based on evaluation of qualitative factors or, for those which step one was completed, the fair value was substantially in excess of carrying value. However, significant changes in our projections about our operating results or other factors could cause us to make interim assessments of impairments in any quarter that could result in some or all of the goodwill being impaired. For our VPT reporting unit in particular, which had $50.0 million in goodwill as of October 2, 2015, our estimates as to future operating results include certain assumptions about factors that cannot be predicted with certainty, including future market conditions, revenue growth rates, and operating margins.

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 12 months from installation, 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.

**Loss Contingencies**

From time to time, we are a party to or otherwise involved in legal proceedings, claims and government inspections or investigations or other legal matters, both inside and outside the United States, arising in the ordinary course of our business or otherwise. 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. Such matters are subject to many uncertainties, outcomes are not predictable with assurance, and actual liabilities could significantly exceed our estimates of potential liabilities. In addition, 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. In connection with our past and present operations and facilities, 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. If we were required to increase or decrease the accrued environmental costs in the future, it would adversely or favorably impact our operating results.
**Defined Benefit Pension Plans**

We sponsor seven defined benefit pension plans in Germany (where we have three defined benefit pension plans), Japan, Switzerland, the Philippines and the United Kingdom covering employees who meet the applicable eligibility requirements in these countries. Several statistical and other factors that attempt to anticipate future events are used in calculating the expenses and liabilities related to the aforementioned plans. These factors include assumptions about the discount rate, expected return on plan assets, and rate of future compensation 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 plan expenses 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 are primarily based on the current effective yield of long-term corporate bonds that are of high quality with satisfactory liquidity and credit rating with durations corresponding to the expected durations of the benefit obligations. A change in the discount rate may cause the present value of benefit obligations to change significantly.

**Valuation of Derivative Instruments**

We use foreign currency forward contracts to reduce the effects of currency rate 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. There are 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). 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 13 months or less, 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 credit default swap rates (for net assets) or our borrowing rate (for net liabilities). 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 on the valuation of our derivative instruments, as well as on our result of operations. There were no transfers of assets or liabilities between fair value measurement levels during fiscal years 2015, 2014 and 2013.

**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 accounting for uncertainty in income taxes requires 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.
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 or decrease our effective tax rate. 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 2015 was the 53 -week period ended October 2, 2015 , fiscal year 2014 was the 52 -week period ended September 26, 2014 , and fiscal year 2013 was the 52 -week period ended on September 27, 2013 . Set forth below is a discussion of our results of operations for fiscal years 2015 , 2014 and 2013 .

Discussion of Results of Operations for Fiscal Years 2015 , 2014 and 2013

Total Revenues

<table>
<thead>
<tr>
<th>Revenues by sales classification</th>
<th>Fiscal Years</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Product</td>
<td></td>
<td>Service</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$2,077.9</td>
<td></td>
<td>$1,021.2</td>
</tr>
<tr>
<td></td>
<td>Percent Change</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>—%</td>
<td></td>
<td>6%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$2,083.8</td>
<td></td>
<td>966.0</td>
</tr>
<tr>
<td></td>
<td>Percent Change</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>1%</td>
<td></td>
<td>9%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$2,055.7</td>
<td></td>
<td>887.2</td>
</tr>
</tbody>
</table>

Product as a percentage of total revenues 67% 68% 70%
Service as a percentage of total revenues 33% 32% 30%

Total revenues increased in fiscal year 2015 over fiscal year 2014 primarily due to an increase in revenues from the “Other” category, partially offset by a decrease in revenues from Imaging Components. Total revenues increased in fiscal year 2014 over fiscal year 2013 primarily due to an increase in revenues from Oncology Systems, and to a lesser extent, an increase in revenues from Imaging Components.

Product revenues were flat in fiscal year 2015 over fiscal year 2014 due to decreases in revenues from Imaging Components and Oncology Systems, offset by an increase in revenues from the “Other” category. Product revenues increased in fiscal year 2014 over fiscal year 2013 due to increases in revenues from Oncology Systems and Imaging Components, partially offset by a decrease in revenues from the “Other” category.

Service revenues increased in fiscal year 2015 over fiscal year 2014 , and in fiscal year 2014 over fiscal year 2013 , primarily due to an increase in revenues from Oncology Systems.

On a constant currency basis, total revenues increased 6% in fiscal year 2015 over fiscal year 2014 , and increased 4% in fiscal year 2014 over fiscal year 2013 .
Revenues by region

<table>
<thead>
<tr>
<th>(Dollars in millions)</th>
<th>Fiscal Years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Americas</td>
<td>$1,546.0</td>
</tr>
<tr>
<td>EMEA</td>
<td>886.4</td>
</tr>
<tr>
<td>APAC</td>
<td>666.7</td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td>$3,099.1</td>
</tr>
</tbody>
</table>

North America

<table>
<thead>
<tr>
<th>(Dollars in millions)</th>
<th>Fiscal Years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>North America</td>
<td>$1,456.5</td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td>$3,099.1</td>
</tr>
</tbody>
</table>

International (1)

<table>
<thead>
<tr>
<th>(Dollars in millions)</th>
<th>Fiscal Years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>International</td>
<td>1,642.6</td>
</tr>
</tbody>
</table>

**Revenues by region**

54%

**North America as a percentage of total revenues**

54% 44% 46%

**International as a percentage of total revenues**

54% 57% 56%

We consider international revenues to be revenues outside of North America.

The Americas revenues increased in fiscal year 2015 over fiscal year 2014 due to increases in revenues from the “Other” category and Oncology Systems, partially offset by a decrease in revenues from Imaging Components. The Americas revenues increased in fiscal year 2014 over fiscal year 2013 primarily due to an increase in revenues from Oncology Systems, and to a lesser extent, increases in revenues from Imaging Components and the “Other” category. On a constant currency basis, The Americas revenues increased by 10% in fiscal year 2015 over fiscal year 2014 , and by 5% in fiscal year 2014 over fiscal year 2013 .

EMEA revenues decreased in fiscal year 2015 over fiscal year 2014 due to a decrease in revenues from Imaging Components, partially offset by an increase in revenues from the “Other” category. EMEA revenues increased in fiscal year 2014 over fiscal year 2013 due to an increase in revenues from Oncology Systems, and to a lesser extent, an increase in revenues from Imaging Components, partially offset by a decrease in revenues from the “Other” category. On a constant currency basis, EMEA revenues increased by 8% in fiscal year 2015 over fiscal year 2014 , and by 1% in fiscal year 2014 over fiscal year 2013 .

APAC revenues decreased in fiscal year 2015 over fiscal year 2014 due to a decrease from Oncology Systems, and to a lesser extent, decreases in revenues from Imaging Components and from the “Other” category. APAC revenues increased in fiscal year 2014 over fiscal year 2013 due to increases in revenues from Imaging Components, the “Other” category and Oncology Systems. On a constant currency basis, APAC revenues decreased by 3% in fiscal year 2015 over fiscal year 2014 and increased by 7% in fiscal year 2014 over fiscal year 2013 .

The U.S. Dollar was stronger against the Euro, the Japanese Yen and other foreign currencies in fiscal year 2015 , compared to fiscal year 2014 . The U.S. Dollar was weaker against the Euro and stronger against the Japanese Yen in fiscal year 2014, compared to fiscal year 2013, such that the differences in exchange rates largely offset each other and did not have a significant impact on the overall revenues. On a constant currency basis, international revenues increased 4% in fiscal year 2015 over fiscal year 2014 and increased 5% in fiscal year 2014 over fiscal year 2013 .

**Oncology Systems Revenues**

Revenues by sales classification

<table>
<thead>
<tr>
<th>(Dollars in millions)</th>
<th>Fiscal Years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Product</td>
<td>$1,356.5</td>
</tr>
<tr>
<td>Service</td>
<td>987.5</td>
</tr>
<tr>
<td><strong>Total Oncology Systems Revenues</strong></td>
<td>$2,344.0</td>
</tr>
</tbody>
</table>

**Product as a percentage of Oncology Systems revenues**

58% 60% 62%

**Service as a percentage of Oncology Systems revenues**

42% 40% 38%

**Oncology Systems revenues as a percentage of total revenues**

76% 77% 77%
Oncology systems product revenues decreased in fiscal year 2015 over fiscal year 2014 primarily due to a decrease in revenues from hardware products as a result of strategic pricing and an unfavorable foreign currency impact, partially offset by an increase in revenues from software licenses. Oncology Systems product revenues increased in fiscal year 2014 over fiscal year 2013 primarily due to an increase in revenues from hardware products.

Oncology Systems service revenues increased in fiscal year 2015 over fiscal year 2014 and in fiscal year 2014 over fiscal year 2013, primarily due to increased customer adoption of service contracts as the warranty period on our TrueBeam systems expire and by an increased number of customers as the installed base of our products continues to grow. Unfavorable foreign currency exchange rate in fiscal year 2015 had a negative impact on Oncology Systems service revenues. The extra week of operations in fiscal year 2015, compared to fiscal year 2014, contributed to an increase of approximately $7 million in Oncology Systems service revenues.

Revenues by region

<table>
<thead>
<tr>
<th>Revenues by region</th>
<th>2015</th>
<th>Percent Change</th>
<th>Fiscal Years</th>
<th>Percent Change</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Americas</td>
<td>$1,209.3</td>
<td>4%</td>
<td>$1,165.5</td>
<td>4%</td>
<td>$1,116.9</td>
</tr>
<tr>
<td>EMEA</td>
<td>703.9</td>
<td>—%</td>
<td>701.1</td>
<td>6%</td>
<td>662.7</td>
</tr>
<tr>
<td>APAC</td>
<td>430.8</td>
<td>(10)%</td>
<td>477.6</td>
<td>1%</td>
<td>473.1</td>
</tr>
<tr>
<td>Total Oncology System Revenues</td>
<td>$2,344.0</td>
<td>—%</td>
<td>$2,344.2</td>
<td>4%</td>
<td>$2,252.7</td>
</tr>
<tr>
<td>North America</td>
<td>$1,128.2</td>
<td>4%</td>
<td>$1,088.2</td>
<td>3%</td>
<td>$1,058.0</td>
</tr>
<tr>
<td>International</td>
<td>1,215.8</td>
<td>(3)%</td>
<td>1,256.0</td>
<td>5%</td>
<td>1,194.7</td>
</tr>
<tr>
<td>Total Oncology System Revenues</td>
<td>$2,344.0</td>
<td>—%</td>
<td>$2,344.2</td>
<td>4%</td>
<td>$2,252.7</td>
</tr>
</tbody>
</table>

North America as a percentage of total Oncology Systems revenues 49% 47% 47%

International as a percentage of total Oncology Systems revenues 51% 53% 53%

The Americas Oncology Systems revenues increased in fiscal year 2015 over fiscal year 2014 primarily due to an increase in service revenues, partially offset by a slight decrease in product revenues. The Americas service revenues increased in fiscal year 2015 over fiscal year 2014 due to an increase in revenues from North America, and to a lesser extent an increase in revenues from Latin America. The Americas product revenues slightly decreased in fiscal year 2015 over fiscal year 2014 primarily due to a decrease in revenues from hardware products in North America, mostly offset by an increase in revenues from software licenses in North America. The Americas Oncology Systems revenues increased in fiscal year 2014 over fiscal year 2013 due to increases in both service revenues and product revenues. The Americas service revenues increased in fiscal year 2014 over fiscal year 2013 primarily due to an increase in revenues from services in North America. The Americas product revenues increased in fiscal year 2014 over fiscal year 2013 primarily due to an increase in revenues from hardware products in Latin America, and to a lesser extent, an increase in revenues from software licenses in North America, partially offset by a decrease in revenues from hardware products in North America.

EMEA Oncology Systems revenues were flat in fiscal year 2015 over fiscal year 2014 primarily due to an increase in product revenues being mostly offset by a decrease in service revenues. EMEA product revenues increased primarily due to an increase in revenues from software licenses, partially offset by a decrease in revenues from hardware products. EMEA product and service revenues were negatively impacted by unfavorable foreign currency exchange rate fluctuations. EMEA Oncology Systems revenues increased in fiscal year 2014 over fiscal year 2013 due to an increase in service revenues, and to a lesser extent, an increase in product revenues. EMEA product revenues increased primarily due to an increase in revenues from hardware products, partially offset by a decrease in revenues from software licenses.

APAC Oncology Systems revenues decreased in fiscal year 2015 over fiscal year 2014 primarily due to a decrease in product revenues, partially offset by an increase in service revenues. APAC product revenues decreased primarily due to a decrease in revenues from hardware products. APAC product and service revenues were negatively impacted by unfavorable foreign currency exchange rate fluctuations. APAC Oncology Systems revenues increased in fiscal year 2014 over fiscal year 2013, primarily due to an increase in service revenues.
Varying cycles of higher and lower revenues between the North American and international regions are impacted by regional influences, which recently have included government stimulus programs, economic and political instability in some countries, uncertainty created by health care reform (such as the excise tax on the sale of most medical devices, Medicare reimbursement rates and consolidation of free standing clinics in the United States), and different technology adoption cycles that are consistent with the gross order patterns. See further discussion of orders under “Gross Orders.”

### Imaging Components Revenues

<table>
<thead>
<tr>
<th>Revenues by sales classification</th>
<th>2015</th>
<th>Percent Change</th>
<th>2014</th>
<th>Percent Change</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Product</td>
<td>$583.5</td>
<td>(8)%</td>
<td>$637.1</td>
<td>3%</td>
<td>$619.9</td>
</tr>
<tr>
<td>Service</td>
<td>27.7</td>
<td>20 %</td>
<td>23.1</td>
<td>5%</td>
<td>22.0</td>
</tr>
<tr>
<td>Total Imaging Components Revenues</td>
<td>$611.2</td>
<td>(7)%</td>
<td>$660.2</td>
<td>3%</td>
<td>$641.9</td>
</tr>
</tbody>
</table>

Product as a percentage of Imaging Components revenues: 95%, 97%, 97%

Service as a percentage of Imaging Components revenues: 5%, 3%, 3%

Imaging Components revenues as a percentage of total revenues: 20%, 22%, 22%

Imaging Components product revenues decreased in fiscal year 2015 over fiscal year 2014 primarily due to a decrease in revenues from our security and inspection products and to a lesser extent, a decrease in revenues from our X-ray flat panel and tube products. Revenues from our security and inspection products decreased in fiscal year 2015 over fiscal year 2014 primarily due to delays in system deployments or tenders in which our customers participate. The market for border protection systems has slowed significantly and end customers, particularly in oil-based economies and war zones in which we have a significant customer base, are delaying system deployments or tenders and considered moving to alternative sources, resulting in a decline in the demand for security and inspection products which is expected to continue in fiscal year 2016. Revenues from our X-ray flat panel and tube products decreased primarily due to pricing pressures resulting from the strengthening of the U.S. Dollar, and the decision of a key customer to in-source some of their products that they had previously purchased from our X-ray flat panel business. These decreases in product revenues were partially offset by a $10.8 million increase in revenues from acquisitions in fiscal year 2015.

Imaging Components product revenues increased in fiscal year 2014 over fiscal year 2013 primarily due to an increase in revenues from X-ray flat panel products, partially offset by a decrease in revenues from X-ray tube products, as customers delayed purchases due to longer tube life resulting from improvements in our X-ray tubes, and a decrease in revenues from security and inspection products.

Imaging Components service revenues in fiscal years 2015, 2014 and 2013 were primarily attributed to our security and inspection products. Imaging Components service revenues increased in fiscal year 2015 over fiscal year 2014 primarily due to a $3.8 million increase in service revenues from one of our acquisitions and in part due to the extra week of operations in fiscal year 2015.

Because sales transactions in Imaging Components are generally denominated in U.S. Dollars, fluctuations in currency exchange rates did not have a material direct impact on Imaging Components international revenues. However, revenues for Imaging Components products were negatively impacted by pricing pressures resulting from the strengthening of the U.S. Dollar against the Japanese Yen and the Euro in fiscal year 2015, compared to fiscal year 2014 which made our products relatively more expensive as compared to non-U.S. manufacturers and to customers outside the U.S.
The Americas Imaging Components revenues decreased in fiscal year 2015 over fiscal year 2014 due to decreases in revenues from security and inspection products and X-ray tube and flat panel products. The decrease in The Americas Imaging Components revenues were partially offset by an increase in revenues from acquisitions of $6.9 million in fiscal year 2015. The Americas Imaging Components revenues increased in fiscal year 2014 over fiscal year 2013 primarily due to an increase in revenues from X-ray flat panel products, partially offset by a decrease in revenues from X-ray tube products.

EMEA Imaging Components revenues decreased in fiscal year 2015 over fiscal year 2014 primarily due to a decrease in revenues from security and inspection products. The decrease in EMEA Imaging Components revenues were partially offset by an increase in revenues from acquisitions of $5.6 million in fiscal year 2015. EMEA Imaging Components revenues increased in fiscal year 2014 over fiscal year 2013 due to an increase in revenues from X-ray tube and flat panel products, partially offset by a decrease in revenues from security and inspection products.

APAC Imaging Components revenues decreased in fiscal year 2015 over fiscal year 2014 primarily due to a decrease from X-ray flat panel products, and to a lesser extent, a decrease in revenues from security and inspection products, partially offset by an increase in revenues from X-ray tube products. The decrease in APAC Imaging Components revenues were partially offset by an increase in revenues from acquisitions of $2.1 million in fiscal year 2015. APAC Imaging Components revenues increased in fiscal year 2014 over fiscal year 2013 primarily due to an increase in revenues from X-ray flat panel products, partially offset by a decrease in revenues from X-ray tube products.

**Other Revenues**

<table>
<thead>
<tr>
<th>Revenues by sales classification</th>
<th>2015</th>
<th>Percent Change</th>
<th>2014</th>
<th>Percent Change</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Product</td>
<td>$137.9</td>
<td>239%</td>
<td>$40.7</td>
<td>(13)%</td>
<td>$46.9</td>
</tr>
<tr>
<td>Service</td>
<td>6.0</td>
<td>30%</td>
<td>4.7</td>
<td>236%</td>
<td>1.4</td>
</tr>
<tr>
<td>Total Other revenues</td>
<td>$143.9</td>
<td>217%</td>
<td>$45.4</td>
<td>(6)%</td>
<td>$48.3</td>
</tr>
</tbody>
</table>

“Other” category revenues increased in fiscal year 2015 over fiscal year 2014 primarily due to an increase in VPT product revenues. VPT product revenues increased primarily due to the completion of the financing for the MPTC project in fiscal year 2015, which resulted in approximately $81 million of revenue recorded related to that project, and due to continued production and installation of VPT projects that are in our backlog. “Other” category revenues decreased in fiscal year 2014 over fiscal year 2013 primarily due to a decrease in VPT product revenues.
Gross Margin

<table>
<thead>
<tr>
<th>Dollars by segment</th>
<th>2015</th>
<th>Percent Change</th>
<th>2014</th>
<th>Percent Change</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oncology Systems</td>
<td>$998.9</td>
<td>(2)%</td>
<td>$1,021.1</td>
<td>5%</td>
<td>$976.2</td>
</tr>
<tr>
<td>Imaging Components</td>
<td>250.6</td>
<td>(10)%</td>
<td>278.6</td>
<td>4%</td>
<td>268.1</td>
</tr>
<tr>
<td>Other</td>
<td>33.2</td>
<td>n/m</td>
<td>2.0</td>
<td>(63)%</td>
<td>5.4</td>
</tr>
<tr>
<td>Gross margin</td>
<td>$1,282.7</td>
<td>(1)%</td>
<td>$1,301.7</td>
<td>4%</td>
<td>$1,249.7</td>
</tr>
</tbody>
</table>

Percentage by segment

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oncology Systems</td>
<td>42.6%</td>
<td>43.6%</td>
<td>43.3%</td>
</tr>
<tr>
<td>Imaging Components</td>
<td>41.0%</td>
<td>42.2%</td>
<td>41.8%</td>
</tr>
<tr>
<td>Total Company</td>
<td>41.4%</td>
<td>42.7%</td>
<td>42.5%</td>
</tr>
</tbody>
</table>

n/m = not meaningful

Total gross margin percentage decreased in fiscal year 2015 over fiscal year 2014 due to decreases in margins from Imaging Components and Oncology Systems, and an increase in revenues from the “Other” category which has lower margins. Total gross margin percentage increased slightly in fiscal year 2014 over fiscal year 2013 due to increases in gross margin percentages in Oncology Systems and Imaging Components, mostly offset by a decrease in the gross margin percentage in the “Other” category.

Total product gross margin percentage was 33.1% in fiscal year 2015, compared to 36.9% in fiscal year 2014 and 37.0% in fiscal year 2013. Total service gross margin percentage was 58.3% in fiscal year 2015, compared to 55.1% in fiscal year 2014 and 55.2% in fiscal year 2013.

Oncology Systems product gross margin percentage was 31.6% in fiscal year 2015, compared to 35.6% in fiscal year 2014 and 35.7% in fiscal year 2013. The decrease in product gross margin percentage in fiscal year 2015 over fiscal year 2014 was due to an unfavorable foreign currency impact and a shift to geographies which generally have lower margins. The decrease in product gross margin in fiscal year 2014 over fiscal year 2013 was primarily due to targeted price decreases, partially offset by a favorable hardware product mix.

Oncology Systems service gross margin percentage was 57.8% in fiscal year 2015, compared to 55.5% in fiscal year 2014 and 55.7% in fiscal year 2013. The increase in service gross margin percentage in fiscal year 2015 over fiscal year 2014 was primarily due to cost containment and an increase in service revenues, partially offset by an unfavorable foreign currency impact. The decrease in service gross margin percentage in fiscal year 2014 over fiscal year 2013 was primarily due to an unfavorable product mix partly offset by higher service contract volume (which lowered the costs per contract), and cost control measures in fiscal year 2014.

We believe the shift of Oncology Systems revenues towards emerging markets, which typically have purchased less complex and lower-priced products compared to developed markets, will generally continue and will negatively impact Oncology Systems gross margin. We believe that the foreign currency exchange rates will continue to cause variability in our Oncology Systems gross margin.

Imaging Components gross margin percentage decreased in fiscal year 2015 over fiscal year 2014 primarily due to decreases in gross margin percentage from X-ray tubes and flat panel products, partially offset by an increase in gross margin percentage from security and inspection products. The decrease in gross margin percentage in our X-ray tube and flat panel products in fiscal year 2015 over fiscal year 2014, was primarily due to increased pricing pressures resulting from the strengthening of the U.S. Dollar and higher material costs in X-ray tube products, partially offset by product and quality cost reductions. The increase in gross margin percentage in security and inspection products was due to a favorable product mix, partially offset by pricing pressures and significantly lower volumes in the second half of fiscal year 2015.

Imaging Components gross margin percentage increased in fiscal year 2014 over fiscal year 2013 due to a higher mix of flat panel sales which generally have higher margins, plus an increase in gross margin percentage in X-ray tube products, partially offset by decreases in gross margin percentages from X-ray flat panel products, security and inspection products, and services.
The increase in gross margin percentage in X-ray tube products during fiscal year 2014 over fiscal year 2013 was primarily due to improved quality costs. The decrease in gross margin percentage in X-ray flat panel products during the fiscal year 2014 over fiscal year 2013 was primarily due to increased pricing pressures. The decrease in gross margin percentage in our security and inspection products during fiscal year 2014, compared to fiscal year 2013 was due to customer pricing pressures and an unfavorable product mix.

**Research and Development**

<table>
<thead>
<tr>
<th>(Dollars in millions)</th>
<th>2015</th>
<th>Percent Change</th>
<th>2014</th>
<th>Percent Change</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Research and development</td>
<td>$245.2</td>
<td>4%</td>
<td>$234.8</td>
<td>13%</td>
<td>$208.2</td>
</tr>
<tr>
<td><strong>As a percentage of total revenues</strong></td>
<td>8%</td>
<td>8%</td>
<td>7%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Research and development expenses increased $10.4 million in fiscal year 2015 over fiscal year 2014 primarily due to increases in expenses of $10.5 million in Imaging Components and $2.4 million in the “Other” category, partially offset by a $2.2 million decrease in expense in Oncology Systems. The $10.5 million increase in expenses in Imaging Components was due to new product development projects and enhancement of existing products and $3.7 million in additional research and development expenses related to our acquisitions in fiscal year 2015. The $2.4 million increase in expenses from the “Other” category was due to an increase in development projects and headcount for our VPT business offset by a favorable currency impact when foreign-currency denominated research and development expenses were translated into U.S. Dollars. The $2.2 million decrease in Oncology Systems was primarily due to a favorable currency impact when foreign-currency denominated research and development expenses were translated into U.S. Dollars, which was partially offset by an increase in expense due to new product development projects and enhancement of existing products.

Research and development expenses increased $26.6 million in fiscal year 2014, over fiscal year 2013 due to an increase in expenses of $21.1 million in Oncology Systems, $4.1 million in Imaging Components, and $1.4 million in the “Other” category. The $21.1 million increase in expenses in Oncology Systems was due to expenses relating to new product development projects and enhancement of existing products, and an unfavorable currency impact when foreign-currency denominated research and development expenses for Oncology Systems were translated into U.S. Dollars. The $4.1 million increase in expenses in Imaging Components was due to new product development projects and enhancement of existing X-ray tube and flat panel products, partially offset by a decrease in expenses relating to security and inspection products. The $1.4 million increase in the “Other” category was due to expenses relating to new product development projects, a net increase in costs associated with increased headcount to support our growing engineering activities in VPT, and an unfavorable currency impact when foreign-currency denominated research and development expenses for VPT were translated into U.S. Dollars, partially offset by a decrease in expenses due to completion of certain existing research and development projects.

**Selling, General and Administrative**

<table>
<thead>
<tr>
<th>(Dollars in millions)</th>
<th>2015</th>
<th>Percent Change</th>
<th>2014</th>
<th>Percent Change</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selling, general and administrative</td>
<td>$488.5</td>
<td>4%</td>
<td>$470.6</td>
<td>9%</td>
<td>$432.6</td>
</tr>
<tr>
<td><strong>Selling, general and administrative as a percentage of total revenues</strong></td>
<td>16%</td>
<td></td>
<td>15%</td>
<td></td>
<td>15%</td>
</tr>
<tr>
<td>Litigation settlement</td>
<td>—</td>
<td>(100)%</td>
<td>$25.1</td>
<td>—</td>
<td>$ —</td>
</tr>
<tr>
<td><strong>Litigation settlement as a percentage of total revenues</strong></td>
<td>—</td>
<td></td>
<td>1%</td>
<td></td>
<td>—</td>
</tr>
</tbody>
</table>

Selling, general and administrative expenses increased $17.9 million in fiscal year 2015 over fiscal year 2014 primarily due to: a $34.5 million increase (including a $5.2 million increase in share-based compensation expense due to the timing of the equity awards) in employee-related costs largely due to an increase in headcount; and a $13.3 million restructuring charge related to our previously announced retirement and workforce reduction programs. These increases were offset by an approximately $16 million favorable currency impact when foreign-currency denominated sales, general and administrative expenses were translated into U.S. Dollars; a lack of $7.7 million impairment charge of our investment in Augmenix in fiscal year 2014; and a $6.0 million decrease in bad debt expense.
Selling, general and administrative expenses increased $38.0 million in fiscal year 2014 over fiscal year 2013 primarily due to: a $32.2 million net increase (including a $3.6 million decrease in share-based compensation expense due to the timing of the equity awards) in employee-related costs largely due to an increase in headcount to support our growing business activities; a $7.7 million impairment charge of our investment in Augmenix; and a $3.7 million unfavorable currency impact when foreign-currency denominated selling, general and administrative expenses were translated into U.S. Dollars. These increases were partially offset by a $9.3 million decrease in legal expenses and a $6.7 million decrease due to no restructuring charges incurred in fiscal year 2014. In addition to the above, the change in fair value of our contingent consideration liabilities decreased our selling, general and administrative expenses by $0.7 million in fiscal year 2014 and by $5.2 million in fiscal year 2013, respectively.

In the second quarter of fiscal year 2014, we recorded a litigation settlement charge of $25.1 million as a result of settlement of patent litigation with University of Pittsburgh, and no such charges were recorded in fiscal years 2015 and 2013 (see Note 9, “Commitments and Contingencies” in our Notes to the Consolidated Financial Statements for additional information).

**Interest Income, Net**

<table>
<thead>
<tr>
<th>(Dollars in millions)</th>
<th>Fiscal Years</th>
<th>2015</th>
<th>Percent Change</th>
<th>2014</th>
<th>Percent Change</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest income, net</td>
<td></td>
<td>$ 5.7</td>
<td>70%</td>
<td>$ 3.3</td>
<td>5%</td>
<td>$ 3.2</td>
</tr>
</tbody>
</table>

Interest income, net of interest expense, increased in fiscal year 2015 over fiscal year 2014, and fiscal year 2014 over fiscal year 2013, primarily due to higher interest income generated from our loans to finance proton treatment centers, partially offset by a higher interest expense associated with increased borrowings from our credit facility.

**Taxes on Earnings**

<table>
<thead>
<tr>
<th>Fiscal Years</th>
<th>2015</th>
<th>Percent Change</th>
<th>2014</th>
<th>Percent Change</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective tax rate</td>
<td>25.7%</td>
<td>(4.0)%</td>
<td>29.7%</td>
<td>1.3%</td>
<td>28.4%</td>
</tr>
</tbody>
</table>

Our effective tax rate decreased in fiscal year 2015 over fiscal year 2014 primarily due to a favorable shift in the geographic mix of earnings, including a decrease in the amount of loss from our VPT business in Germany, a jurisdiction for which we have a full valuation allowance, partially offset by the impact of a fluctuation in foreign currency exchange rates. In addition, our effective tax rate in fiscal year 2015 reflected a full year’s benefit of the federal research and development credit, while the effective tax rate in fiscal year 2014 reflected only one quarter’s benefit of the credit.

Our effective tax rate increased in fiscal year 2014 from fiscal year 2013 primarily due to a decrease in the benefit from the foreign rate differential. The decrease in the benefit from the foreign tax rate differential was primarily due to a fluctuation in foreign currency exchange rates and our inability to recognize a tax benefit for losses in certain jurisdictions, primarily from our VPT business in Germany, a jurisdiction for which we have a full valuation allowance. In addition, our effective tax rate in fiscal year 2014 reflected only one quarter’s benefit of the federal research and development credit, while the effective tax rate in fiscal year 2013 reflected the full year’s federal research and development credit for fiscal year 2013 in addition to the three quarters’ retroactive reinstatement of the credit.

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. See Note 14, “Taxes on Earnings” of the Notes to the Consolidated Financial Statements for further information.
Diluted Net Earnings Per Share

<table>
<thead>
<tr>
<th>Fiscal Years</th>
<th>2015</th>
<th>Percent Change</th>
<th>2014</th>
<th>Percent Change</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diluted net earnings per share</td>
<td>$4.09</td>
<td>7%</td>
<td>$3.83</td>
<td>(4)%</td>
<td>$3.98</td>
</tr>
</tbody>
</table>

Diluted net earnings per share increased in fiscal year in fiscal year 2015 over fiscal year 2014 primarily due to a reduction in the number of diluted shares of common stock outstanding due to share repurchases and a decrease in the effective tax rate, partially offset by a decrease in earnings before taxes. Earnings before taxes were negatively impacted by a $13.3 million charge in fiscal year 2015 relating to our restructuring programs. Diluted net earnings per share in fiscal year 2014 was negatively impacted by a litigation settlement expense of $25.1 million and an impairment charge of $7.7 million for our investment in Augmenix. Besides the increase in operating expenses, the decrease in diluted earnings per share in fiscal year 2014 over fiscal year 2013 was due to an increase in our effective tax rate, partially offset by increases in revenues, gross margin, and a reduction in the number of diluted shares of common stock outstanding due to share repurchases.

Gross Orders

<table>
<thead>
<tr>
<th>Total Gross Orders (by segment)</th>
<th>(Dollars in millions)</th>
<th>Fiscal Years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
<td>Percent Change</td>
</tr>
<tr>
<td>Oncology Systems</td>
<td>$2,696.9</td>
<td>— %</td>
</tr>
<tr>
<td>Imaging Components</td>
<td>605.1</td>
<td>(16)%</td>
</tr>
<tr>
<td>Other</td>
<td>317.2</td>
<td>163 %</td>
</tr>
<tr>
<td>Total Gross Orders</td>
<td>$3,619.2</td>
<td>3 %</td>
</tr>
</tbody>
</table>

n/m = not meaningful

Gross orders are defined as the sum of new orders recorded during the period adjusted for any revisions to existing orders during the period. New orders are recorded for the total contractual amount, excluding certain pass-through items, once a written agreement for the delivery of goods or provision of services is in place and, for businesses other than VPT, when shipment of the product is expected to occur within two years, so long as any contingencies are deemed perfunctory. However, we will not record security and inspection products orders from governmental agencies with bid protest provisions until the expiration of the bid protest period. For our VPT business, we record orders when construction of the related proton therapy treatment center is reasonably expected to start within two years, but only if any contingencies are either deemed perfunctory or if the existence and nature of material contingencies is disclosed. However, we will not record VPT orders if there are major financing contingencies, if a substantial portion of the financing for the project is not reasonably assured or if customer board approval contingencies are pending. We perform a quarterly review to verify that outstanding orders remain valid.

Gross 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. Gross orders and revenues for our security and inspection products in our Imaging Components segment 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. Because an order for a proton therapy system can be relatively large, an order in one fiscal period will cause gross orders in our VPT business to vary significantly, making comparisons between fiscal periods more difficult. Furthermore, bid awards, primarily in our VPT business, may be subject to challenge by third parties, which can make these orders more unpredictable than other products.
## Oncology Systems Gross Orders

### Gross Orders by region

<table>
<thead>
<tr>
<th>(Dollars in millions)</th>
<th>Americas</th>
<th>Percent Change</th>
<th>EMEA</th>
<th>Percent Change</th>
<th>APAC</th>
<th>Percent Change</th>
<th>Total Oncology Systems Gross Orders</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>$1,381.3</td>
<td>1%</td>
<td>826.0</td>
<td>—%</td>
<td>489.6</td>
<td>—%</td>
<td>$2,696.9</td>
</tr>
<tr>
<td>2014</td>
<td>$1,369.3</td>
<td>10%</td>
<td>826.2</td>
<td>3%</td>
<td>488.9</td>
<td>(4)%</td>
<td>$2,684.4</td>
</tr>
<tr>
<td>2013</td>
<td>$1,245.0</td>
<td></td>
<td>801.1</td>
<td></td>
<td>508.0</td>
<td></td>
<td>$2,554.1</td>
</tr>
</tbody>
</table>

### Fiscal Years

#### Americas

- **2015**: $1,381.3 (1%)
- **2014**: $1,369.3 (10%)
- **2013**: $1,245.0

#### EMEA

- **2015**: 826.0
- **2014**: 826.2 (3%)
- **2013**: 801.1

#### APAC

- **2015**: 489.6
- **2014**: 488.9 (4%)
- **2013**: 508.0

#### Total Oncology Systems Gross Orders

- **2015**: $2,696.9 (—%)
- **2014**: $2,684.4 (5%)
- **2013**: $2,554.1

The Americas Oncology Systems gross orders increased in fiscal year 2015 over fiscal year 2014 primarily due to an increase in gross orders from services and hardware products in North America, primarily offset by a decrease in gross orders from hardware products in Latin America and software licenses in North America. The Americas Oncology Systems gross orders increased in fiscal year 2014 over fiscal year 2013 due to increases in gross orders from software licenses and services in North America and from hardware products in Latin America, partially offset by a decrease in gross orders from hardware products in North America. On a constant currency basis, The Americas Oncology Systems gross orders increased 1% in fiscal year 2015 over fiscal year 2014, and increased 8% in fiscal year 2014 over fiscal year 2013.

EMEA Oncology Systems gross orders were flat in fiscal year 2015 over fiscal year 2014 primarily due to an increase in gross orders from services, offset by a decrease in gross orders from hardware products. EMEA Oncology Systems gross orders increased in fiscal year 2014 over fiscal year 2013 primarily due to increases in gross orders from services, and software licenses, partially offset by a decrease in gross orders from hardware products. On a constant currency basis, EMEA Oncology Systems gross orders increased 12% in fiscal year 2015 over fiscal year 2014, and was flat in fiscal year 2014 over fiscal year 2013.

APAC Oncology Systems gross orders were flat in fiscal year 2015 over fiscal year 2014 primarily due to increases in gross orders from services and software licenses, mostly offset by a decrease in gross orders from hardware products. APAC Oncology Systems gross orders decreased in fiscal year 2014 over fiscal year 2013 due to a decrease in gross orders from hardware products, partially offset by an increase in gross orders from services. On a constant currency basis, APAC Oncology Systems gross orders increased 9% in fiscal year 2015 over fiscal year 2014, and increased 5% in fiscal year 2014 over fiscal year 2013.

The extra week of operations in fiscal year 2015 contributed to an increase of approximately $7 million in Oncology Systems service gross orders in fiscal year 2015 over fiscal year 2014.

On a constant currency basis, overall Oncology Systems gross orders increased 6% in fiscal year 2015 over fiscal year 2014, and increased 5% in fiscal year 2014 over fiscal year 2013.

The trailing 12 month percentage change in gross orders for Oncology Systems at October 2, 2015, and for the three immediately prior fiscal quarters were:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Americas</td>
<td>1%</td>
<td>8%</td>
<td>8%</td>
<td>7%</td>
</tr>
<tr>
<td>EMEA</td>
<td>—%</td>
<td>(3)%</td>
<td>(2)%</td>
<td>5%</td>
</tr>
<tr>
<td>APAC</td>
<td>—%</td>
<td>—%</td>
<td>(5)%</td>
<td>1%</td>
</tr>
<tr>
<td>North America</td>
<td>3%</td>
<td>6%</td>
<td>6%</td>
<td>4%</td>
</tr>
<tr>
<td>International</td>
<td>(2)%</td>
<td>1%</td>
<td>—%</td>
<td>6%</td>
</tr>
<tr>
<td>Total Oncology Systems Gross Orders</td>
<td>—%</td>
<td>3%</td>
<td>3%</td>
<td>5%</td>
</tr>
</tbody>
</table>
Consistent with the historical pattern, we expect that Oncology Systems gross orders will continue to experience regional fluctuations, with an overall shift of gross orders towards international regions and emerging markets. Oncology Systems gross orders are affected by foreign currency fluctuations. In addition, the availability of government programs that stimulate the purchase of healthcare products could affect the demand for our products from period to period, and could therefore make it difficult to compare our financial results.

### Imaging Components Gross Orders

<table>
<thead>
<tr>
<th>Gross Orders by region</th>
<th>2015</th>
<th>Percent Change</th>
<th>2014</th>
<th>Percent Change</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Americas</td>
<td>$204.9</td>
<td>(8)%</td>
<td>$222.1</td>
<td>3%</td>
<td>$214.9</td>
</tr>
<tr>
<td>EMEA</td>
<td>146.2</td>
<td>(35)%</td>
<td>223.6</td>
<td>23%</td>
<td>182.4</td>
</tr>
<tr>
<td>APAC</td>
<td>254.0</td>
<td>(8)%</td>
<td>276.8</td>
<td>2%</td>
<td>270.9</td>
</tr>
<tr>
<td><strong>Total Imaging Components Systems Gross Orders</strong></td>
<td>$605.1</td>
<td>(16)%</td>
<td>$722.5</td>
<td>8%</td>
<td>$668.2</td>
</tr>
</tbody>
</table>

The Americas Imaging Components gross orders decreased in fiscal year 2015 over fiscal year 2014 primarily due to a decrease in gross orders from X-ray flat panel products, and to a lesser extent, a decrease in gross orders from X-ray tube products, partially offset by an increase in gross orders from security and inspection products. The Americas Imaging Components gross orders increased in fiscal year 2014 over fiscal year 2013 primarily due to an increase in gross orders from X-ray flat panel products.

EMEA Imaging Components gross orders decreased in fiscal year 2015 over fiscal year 2014 primarily due to a decrease in gross orders from security and inspection products, and to a lesser extent a decrease in gross orders from X-ray tube products. EMEA Imaging Components gross orders increased in fiscal year 2014 over fiscal year 2013, primarily due to an increase in gross orders from security and inspection products and to a lesser extent an increase in gross orders from X-ray flat panel products.

APAC Imaging Components gross orders decreased in fiscal year 2015 over fiscal year 2014 primarily due to a decrease in gross orders from X-ray tube products, and to a lesser extent, a decrease in gross orders from security and inspection products. APAC Imaging Components gross orders increased in fiscal year 2014 over fiscal year 2013 primarily due to an increase in gross orders from X-ray flat panel products, partially offset by a decrease in gross orders from X-ray tube products.

The difference in currency exchange rates between the U.S. Dollar and foreign currencies in fiscal year 2015, as compared to fiscal year 2014, did not have a material impact on Imaging Components international orders because orders in Imaging Components are generally denominated in U.S. Dollars. However, overall, gross orders from Imaging Components in fiscal year 2015, as compared to fiscal year 2014, were negatively impacted by the pricing pressures resulting from strengthening of the U.S. Dollar against the Japanese Yen and the Euro.

### Other Gross Orders

The “Other” category gross orders increased in fiscal year 2015 over fiscal year 2014 primarily due to VPT recording six proton therapy product gross orders in fiscal year 2015. The “Other” category gross orders increased in fiscal year 2014 over fiscal year 2013 primarily due to VPT recording three proton therapy product gross orders in fiscal year 2014, compared to no proton therapy product gross orders in fiscal year 2013.

### Backlog

Backlog is the accumulation of all gross orders for which revenues have not been recognized and are still considered valid. Backlog also includes a small portion of billed service contracts that are included in deferred revenue. Backlog is stated at
historical foreign currency exchange rates and revenue is released from backlog at current exchange rates, with any difference recorded as a backlog adjustment. Backlog at October 2, 2015 was $3.5 billion, including approximately $345 million in VPT backlog, which was an increase of 10% over the backlog at September 26, 2014. Our Oncology Systems backlog at October 2, 2015 was 7% higher than the backlog at September 26, 2014, which reflected an 8% increase for the international region and a 5% increase for North America.

We perform a quarterly review to verify that outstanding orders in the backlog remain valid. Aged orders that are not expected to be converted to revenues are deemed dormant and are reflected as a reduction in the backlog amounts in the period identified. Backlog adjustments are comprised of dormancies, cancellations, foreign currency exchange rate adjustments, backlog acquired from acquisitions, and other adjustments. In fiscal years 2015, 2014 and 2013, our backlog adjustments were $214.9 million, $176.3 million and $257.3 million, respectively.

Liquidity and Capital Resources

Liquidity is the measurement of our ability to meet potential cash requirements, including ongoing commitments to repay borrowings, acquire businesses or make other investments or loans, repurchase shares of VMS common stock, and fund continuing operations and capital expenditures. Our sources of cash have included operations, borrowings, stock option exercises and employee stock purchases and investment income. Our cash usage is actively managed on a daily basis to ensure the maintenance of sufficient funds to meet our needs.

Cash and Cash Equivalents

The following table summarizes our cash and cash equivalents:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>October 2, 2015</th>
<th>September 26, 2014</th>
<th>Increase (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and cash equivalents</td>
<td>$845.5</td>
<td>$849.3</td>
<td>$(3.8)</td>
</tr>
</tbody>
</table>

The decrease in cash and cash equivalents in fiscal year 2015 compared to fiscal year 2014 was due to $422.0 million of cash used for the repurchase of shares of VMS common stock, $195.0 million used for repayments under the credit facility agreement, $95.3 million used for business acquisitions net of cash acquired and $91.4 million used for purchases of property, plant and equipment. These decreases were mostly offset by $469.6 million in cash provided by operating activities, $145.0 million in cash borrowed under our credit facility agreement, $108.6 million in net cash borrowed under our credit facility agreements with maturities less than 90 days and $91.0 million of cash provided by stock option exercises and employee stock purchases.

At October 2, 2015, we had approximately $18.4 million, or 2%, of cash and cash equivalents in the United States. Approximately $827.1 million, or 98%, of cash and cash equivalents was held abroad and a portion of this amount could be subject to additional taxation if it were repatriated to the United States. As of October 2, 2015, most of our cash and cash equivalents that were held abroad were in U.S. Dollars and were primarily held as bank deposits. In addition to cash flows generated from operations, a significant portion of which are generated in the United States, 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, VMS share repurchases, acquisitions, and other corporate purposes.

Cash Flows

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Fiscal Years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Net cash flow provided by (used in):</td>
<td></td>
</tr>
<tr>
<td>Operating activities</td>
<td>$469.6</td>
</tr>
<tr>
<td>Investing activities</td>
<td>(210.9)</td>
</tr>
<tr>
<td>Financing activities</td>
<td>(276.7)</td>
</tr>
<tr>
<td>Effects of exchange rate changes on cash and cash equivalents</td>
<td>14.2</td>
</tr>
<tr>
<td>Net increase (decrease) in cash and cash equivalents</td>
<td>$(3.8)</td>
</tr>
</tbody>
</table>
Our primary cash inflows and outflows for fiscal years 2015, 2014, and 2013, were as follows:

- We generated net cash from operating activities of $469.6 million in fiscal year 2015, compared to $449.0 million in fiscal year 2014. The $20.6 million increase in net cash from operating activities during fiscal year 2015 compared to fiscal year 2014 was driven primarily by an increase of $23.1 million in the net change from operating assets and liabilities (working capital items) and an increase of $8.3 million in net earnings, partially offset by a decrease of $10.8 million in non-cash items.

The major contributors to the net change in working capital items in fiscal year 2015 were as follows:

- Accounts receivable increased $79.4 million primarily due to longer payment cycles and higher revenues in VPT.
- Inventories increased $41.6 million due to an increase in inventories in Imaging Components and Oncology Systems in anticipation of future demand, partially offset by a decrease in inventories in VPT as a result of the recognition of revenue relating to MPTC.
- Deferred revenue and advance payments from customers increased $71.6 million due to receipts of down payments for orders for which revenues have not been recognized and due to the nature of contracts and timing of customer acceptances primarily in Oncology Systems.

The $6.2 million decrease in net cash from operating activities during fiscal year 2014 compared to fiscal year 2013 was driven primarily by a decrease of $34.5 million in net earnings and a decrease of $2.3 million in net change from operating assets and liabilities (working capital items), partially offset by an increase of $30.6 million in non-cash items.

The major contributors to the net change in working capital items in fiscal year 2014 were as follows:

- Accounts receivable increased $74.5 million due to higher revenues and longer payment cycles.
- Inventories increased $43.3 million due to anticipated customer demands for products in fiscal year 2015 mainly in VPT.
- Deferred revenue and advance payments from customers increased $31.9 million due to receipts of down payments for VPT and Oncology Systems orders for which revenues have not been recognized.

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, product installation or 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 $210.9 million of net cash in fiscal year 2015, compared to $133.1 million of net cash used in fiscal year 2014 and $96.3 million of net cash used in fiscal year 2013. Cash used for purchases of property, plant and equipment increased to $91.4 million in fiscal year 2015, compared to $89.6 million in fiscal year 2014 and $76.3 million in fiscal year 2013, representing our continued investment to expand our global infrastructure. During fiscal year 2015, we used $95.3 million of net cash primarily for the acquisitions of Claymount, certain assets from a sole proprietor and MeVis and $23.7 million for notes receivable. During fiscal year 2014, we used $45.2 million to fund a portion of our loan commitment to CPTC, $31.5 million for acquisitions of businesses and $5.5 million to fund notes receivable, partially offset by $38.1 million received from the sale of a portion of our loan to CPTC. During fiscal year 2013, we used $10.0 million to fund a portion of our loan commitment to CPTC and used $10.0 million to fund a note receivable.
- Financing activities used $276.7 million of net cash in fiscal year 2015, compared to $595.5 million of net cash used in fiscal year 2014 and $51.6 million of net cash provided in fiscal year 2013. In fiscal year 2015, we used $422.0 million of net cash for the repurchase of VMS common stock compared to $627.7 million in fiscal year 2014 and $419.9 million in fiscal year 2013. In fiscal years 2015 and 2014, we repaid $195.0 million and $68.8 million of our credit facility agreement and other bank borrowings, as compared to no repayments in fiscal year 2013. In fiscal year 2013, net repayments totaled $155.0 million under the credit facility agreements with maturities less than 90 days. Cash provided by financing activities included cash proceeds from employee stock option exercises and employee stock purchases of $91.0 million, $99.7 million and $129.6 million in fiscal years 2015, 2014 and 2013, respectively. We had $145.0 million in borrowings under our credit facility agreement and $108.6 million in net borrowings under
credit facility agreements with maturities less than 90 days in fiscal year 2015. We borrowed $500.0 million under our credit facility agreement in fiscal year 2013.

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% of revenues in fiscal year 2016.

In August 2013, we entered into a five-year credit agreement (the “Credit Agreement”) with certain lenders and BofA as administrative agent that provides for (i) a five-year term loan facility in an aggregate principal amount of up to $500 million (the “2013 Term Loan Facility”) and (ii) a five-year revolving credit facility in an aggregate principal amount of up to $300 million (the “2013 Revolving Credit Facility” and collectively with the 2013 Term Loan Facility, the “2013 Credit Facility”). The 2013 Revolving Credit Facility also includes a $50 million sub-facility for the issuance of letters of credit and permits swing line loans of up to $25 million. The aggregate commitments under the 2013 Term Loan Facility may be increased by up to $100 million and the aggregate commitments under the 2013 Revolving Credit Facility may be increased by up to $200 million, subject to certain conditions being met, including lender approval. We may prepay, reduce or terminate the commitments without penalty. The 2013 Credit Facility contains provisions that limit our ability to pay cash dividends. The proceeds of the 2013 Credit Facility may be used for working capital, capital expenditures, Company share repurchases, acquisitions and other corporate purposes.

In addition, our Japanese subsidiary (“VMS KK”) has an unsecured uncommitted credit agreement with Sumitomo Mitsui Banking Corporation that enables VMS KK to borrow and have outstanding at any given time a maximum of 3 billion Japanese Yen (the “Sumitomo Credit Facility”). In February 2015, the Sumitomo Credit Facility was extended and will expire in February 2016. At September 26, 2014, there were no outstanding balances under the Sumitomo Credit Facility.

See Note 7, "Borrowings" of the Notes to the Consolidated Financial Statements for a detailed discussion regarding the 2013 Credit Facility and the Sumitomo Credit Facility.

In April 2014, we paid the outstanding balance of $6.3 million for the principal amount and accrued interest of our unsecured term loan.

The following table provides additional information regarding our short-term borrowings (excluding current maturities of long-term debt):

<table>
<thead>
<tr>
<th>(Dollars in millions)</th>
<th>Fourth Quarter of Fiscal Year 2015</th>
<th>Fiscal Years 2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount outstanding (at end of period)</td>
<td>$ 108.4</td>
<td>$ 108.4</td>
<td>$ —</td>
<td>$ —</td>
</tr>
<tr>
<td>Weighted average interest rate (at end of period)</td>
<td>1.41%</td>
<td>1.41%</td>
<td>—%</td>
<td>—%</td>
</tr>
<tr>
<td>Average amount outstanding (during period)</td>
<td>$ 142.5</td>
<td>$ 104.5</td>
<td>$ 8.2</td>
<td>$ 167.8</td>
</tr>
<tr>
<td>Weighted average interest rate (during period)</td>
<td>1.44%</td>
<td>1.48%</td>
<td>0.72%</td>
<td>1.45%</td>
</tr>
<tr>
<td>Maximum month-end amount outstanding during period</td>
<td>$ 139.2</td>
<td>$ 140.0</td>
<td>$ 29.6</td>
<td>$ 231.9</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 the next 12 months and into the foreseeable future. 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 commitments and other strategic investments.

Total debt as a percentage of total capital increased to 22.3% at October 2, 2015 from 21.3% at September 26, 2014 primarily due to increased borrowings under our 2013 Credit Facility. The ratio of current assets to current liabilities decreased to 1.83 to 1 at October 2, 2015 from 2.08 to 1 at September 26, 2014.

Days Sales Outstanding
Trade accounts receivable days sales outstanding (“DSO”) was 90 days at October 2, 2015 compared to 85 days at September 26, 2014. Excluding VPT, DSO was 82 days at October 2, 2015 compared to 80 days at September 26, 2014. Our accounts receivable and DSO are impacted by a number of factors, primarily including the timing of product shipments, product installation or customer acceptance, collections performance, payment terms, the mix of revenues from different regions and the effects of continued economic instability. As of October 2, 2015, approximately 6% of our accounts receivable balance was related to customer contracts with remaining terms of more than one year.

Share Repurchase Program
During fiscal years 2015, 2014 and 2013, we repurchased 4,824,849, 7,750,000 and 6,000,000 shares, respectively, of VMS common stock under our repurchase programs. The aggregate amount of these repurchases totaled $422.0 million, $624.0 million and $423.7 million in fiscal years 2015, 2014 and 2013, respectively. The repurchased shares include shares of VMS common stock repurchased under various accelerated share repurchase agreements. All shares that were repurchased have been retired.

In August 2014, our Board of Directors authorized the repurchase of 6,000,000 shares of VMS common stock from August 15, 2014 through December 31, 2015. As of October 2, 2015, 1,425,151 shares of VMS common stock remained available for repurchase under the August 2014 authorization. In November 2015, our Board of Directors authorized the repurchase of an additional 8,000,000 shares of VMS common stock through December 31, 2016.

For more details see Note 11, "Stockholders' Equity" of the Notes to the Consolidated Financial Statements for further discussion.

Contractual Obligations
The following summarizes our contractual obligations as of October 2, 2015 and the effect such obligations are expected to have on our liquidity and cash flows in future periods:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Payments Due By Period</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fiscal Year</td>
</tr>
<tr>
<td></td>
<td>2016</td>
</tr>
<tr>
<td>Long-term debt (1) (including current maturities)</td>
<td>$ 50.0</td>
</tr>
<tr>
<td>Interest obligation on long-term debt (including current maturities) (2)</td>
<td>4.9</td>
</tr>
<tr>
<td>Operating leases (3)</td>
<td>22.2</td>
</tr>
<tr>
<td>Purchase obligations (4)</td>
<td>24.8</td>
</tr>
<tr>
<td>Defined benefit pension plans (5)</td>
<td>7.6</td>
</tr>
<tr>
<td>Total (6)</td>
<td>$ 109.5</td>
</tr>
</tbody>
</table>

(1) For further discussion regarding long-term debt, see Note 7, "Borrowings" of the Notes to the Consolidated Financial Statements.
(2) Interest on long-term debt has been calculated based on the interest rate applicable as of October 2, 2015.
(3) Operating leases include future minimum lease payments under all our noncancelable operating leases as of October 2, 2015.
(4) Purchase obligations include agreements to purchase goods or services that are enforceable, are legally binding and non-cancellable. Purchase obligations do not include agreements that are cancellable without penalty.
As further described in Note 10, "Retirement Plans" of the Notes to the Consolidated Financial Statements, our post-retirement benefit plan and two defined benefit pension plans are not presented in the table above as they are not material. As of October 2, 2015, the remaining defined benefit pension plans were underfunded by $20.4 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 necessary to fund our defined benefit pension plans beyond the next fiscal year.

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 October 2, 2015, our total liability for uncertain tax positions was $44.5 million, of which we do not anticipate a payment in the next 12 months. We are unable to reliably estimate the timing of the remainder of future payments related to uncertain tax positions. See a detailed discussion in Note 14, "Taxes on Earnings" of the Notes to the Consolidated Financial Statements.

- As further described in Note 9, “Commitments and Contingencies,” of the Notes to the Consolidated Financial Statements, as of October 2, 2015, we had accrued $8.8 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 becomes more clearly defined.

- In connection with the acquisitions of businesses in prior years, we entered into agreements which include provisions to make additional consideration payments upon the achievement of certain milestones by the acquired businesses. As of October 2, 2015, the accrual for potential contingent consideration under these agreements was $4.1 million.

- As further described in Note 9, “Commitments and Contingencies,” of the Notes to the Consolidated Financial Statements, as of October 2, 2015, our outstanding commitment under the loan to MPTC was $22.8 million, to be paid in four installments of $5.7 million each on June 30, 2016, September 30, 2016, December 30, 2016 and March 31, 2017. As of October 2, 2015, our remaining commitment under the loan to the New York Proton Center ("NYPC") was $72.8 million, to be paid primarily through fiscal year 2018.

- As further described in Note 6, “Related Party Transactions” of the Notes to the Consolidated Financial Statements, as of October 2, 2015, we had an estimated fixed cost commitments of $4.4 million related to dpiX’s amended agreement for the first quarter of fiscal year 2016. The fixed cost commitment for future periods will be determined and approved by the dpiX board of directors at the beginning of each calendar year.

- As further described in Note 15, "Business Combinations" of the Notes to the Consolidated Financial Statements, subsequent to fiscal year 2015, in October 2015, we committed to grant the noncontrolling shareholders of MeVis: (1) an annual recurring net compensation of €0.95 per MeVis share and (2) a put right for their MeVis shares at €19.77 per MeVis share. As of October 2, 2015, noncontrolling share holders together held approximately 482,000 shares of MeVis, representing 26.5% of the outstanding shares.

Contingencies

Environmental Remediation Liabilities

For a discussion of environmental remediation liabilities, see Note 9, “Commitments and Contingencies — Environmental Remediation Liabilities” of the Notes to the Consolidated Financial Statements, which discussion is incorporated herein by reference.

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 inside 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. See Note 9, “Commitments and Contingencies — Other Matters” of the Notes to the Consolidated Financial Statements, which discussion is incorporated herein by reference.
**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 October 2, 2015, 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 Standards or Updates Not Yet Effective**

In November 2015, the Financial Accounting Standards Board (“FASB”) issued an amendment to its accounting guidance related to balance sheet classification of deferred taxes. The amendment requires that deferred tax liabilities and assets be classified as noncurrent in the statement of financial position, thereby simplifying the current guidance that requires an entity to separate deferred liabilities and assets into current and noncurrent amounts. The amendment will be effective for us beginning in the first quarter of fiscal year 2018. Early adoption is permitted. The amendment can be adopted either prospectively or retrospectively. We are evaluating the impact of adopting this guidance to our consolidated financial statements.

In September 2015, the FASB issued a new accounting standard that eliminates the requirement to restate prior period financial statements for measurement period adjustments following a business combination. The new guidance requires that the cumulative impact of a measurement period adjustment including the impact on prior periods be recognized in the reporting period in which the adjustment is identified along with additional disclosures. The new guidance will be effective for us beginning in the first quarter of fiscal year 2017. The new guidance is required to be adopted prospectively with early adoption permitted for financial statements that have not yet been made available for issuance. The new guidance is not expected to have a material impact to our consolidated financial statements.

In July 2015, the FASB issued an amendment to its accounting guidance related to inventory measurement. The amendment requires inventory measured using first-in, first-out (FIFO) or average cost to be subsequently measured at the lower of cost and net realizable value, thereby simplifying the current guidance that requires an entity to measure inventory at the lower of cost or market. The amendment will be effective for us beginning in the first quarter of fiscal year 2018 and is required to be adopted prospectively. Early adoption is permitted. The new guidance is not expected to have a material impact to our consolidated financial statements.

In April 2015, the FASB issued an amendment to its accounting guidance related to internal use software. The amendment clarifies that the software license element of a cloud computing arrangement should be accounted for consistent with the acquisition of other software licenses. The amendment will be effective for us beginning in the first quarter of fiscal year 2017. Early adoption is permitted. The amendment can be adopted either prospectively or retrospectively. We are evaluating the impact of adopting this guidance to our consolidated financial statements.

In April 2015, the FASB issued an amendment to its accounting guidance related to retirement benefits. The amendment provides a practical expedient that permits an entity with a fiscal year-end that does not coincide with a month-end to measure defined benefit plan assets and obligations using the month-end that is closest to the entity’s fiscal year-end and apply that practical expedient consistently from year to year. The amendment also provides a practical expedient that permits an entity that has a significant event in an interim period to remeasure defined benefit plan assets and obligations using the month-end that is closest to the date of the significant event. The amendment will be effective for us beginning in the first quarter of fiscal year 2017 and is required to be applied on a retrospective basis. Early adoption is permitted. The amendment is not expected to have a material impact to our consolidated financial statements.

In March 2015, the FASB issued an amendment to its accounting guidance related to presentation of debt issuance costs. The amendment requires that debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability. The amendment will be effective for us beginning in the first quarter of fiscal year 2017. Early adoption is not permitted. The amendment is required to be applied on a retrospective basis. In August 2015, the FASB further clarified that entities are permitted to defer and present debt issuance costs related to line-of-
credit arrangements as assets. These amendments are not expected to have a material impact to our consolidated financial statements.

In February 2015, the FASB issued an amendment to its accounting guidance related to consolidation. The amendment modifies the analysis that a reporting entity must perform to determine whether it should consolidate certain types of legal entities. The amendment will be effective for us beginning in the first quarter of fiscal year 2017. Early adoption is permitted. The amendment permits the use of either the retrospective or cumulative effect transition method. The amendment is not expected to have a material impact to our consolidated financial statements.

In June 2014, the FASB issued an amendment to its accounting guidance related to stock-based compensation. The amendment requires that a performance target that could be achieved after the requisite service period be treated as a performance condition that affects vesting, rather than a condition that affects the grant-date fair value. The new guidance will be effective for us beginning in the first quarter of fiscal year 2017. Early adoption is permitted. The amendment can be applied on a prospective basis to all share-based payments granted or modified on or after the effective date. Entities will also be provided an option to apply the guidance on a modified retrospective basis to existing awards. The amendment is not expected to have a material impact to our consolidated financial statements.

In May 2014, the FASB issued an amendment to its accounting guidance related to revenue recognition. The amendment sets forth a single, comprehensive revenue recognition model for all contracts with customers to improve comparability. The amendment requires revenue recognition to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. In June 2015, the FASB approved a one-year deferral of the amendment. The new guidance will be effective for us beginning in the first quarter of fiscal year 2019, with early adoption permitted, but not before the first quarter of fiscal year 2018. The amendment can be applied either retrospectively to each prior reporting period presented (i.e., full retrospective adoption) or with the cumulative effect of initially applying the update recognized at the date of the initial application (i.e., modified retrospective adoption) along with additional disclosures. We are evaluating the impact of adopting this guidance to our consolidated financial statements.

**Item 7A. Quantitative and Qualitative Disclosures About Market Risks**

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

**Credit Risk and Counterparty 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 obligations to us under such contracts.

We are also exposed to credit loss in the event of default by counterparties of our financing receivables and CPTC, the obligor under the loan facility in which we are participating to finance the construction and start-up operations of the Scripps Proton Therapy Center. In November 2015, ORIX, J.P. Morgan and the Company (collectively the “Lenders”) and CPTC entered into a forbearance agreement whereby the lenders will not enforce their rights to principal and interest payments until April 2017, subject to CPTC maintaining certain covenants and achieving certain targets, with additional extensions through September 2017 based on hitting additional targets largely around patient volume and cash flow. In connection with the forbearance agreement the Lenders agreed to make available up to an additional $9.7 million of loan proceeds (based on their pro-rata share of the existing loan) with terms similar to the Tranche A loan for additional working capital needs; our proportionate share of this commitment is $4.4 million and is expected to be drawn down during fiscal year 2016. There were no other significant changes to the loan agreements.

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 our credit facilities as 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 last economic downturn and accompanying contraction in the credit markets heighten these risks. Concerns over continued economic instability could make it more difficult for us to collect outstanding receivables and could adversely impact our liquidity.
**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 large foreign currency transactions when they are not transacted in the subsidiaries’ functional currency or in U.S. Dollars. The foreign currency transactions that fit our risk management policy criteria are hedged with foreign currency 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 foreign currency forward contracts for speculative or trading purposes. The forward contracts range from one to thirteen 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 subsidiaries’ functional currency or the U.S. Dollar.

The notional amounts of foreign currency 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 foreign currency forward contracts outstanding at October 2, 2015 were as follows:

<table>
<thead>
<tr>
<th>(In millions)</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>$ 13.9</td>
<td>$</td>
<td>1.42</td>
</tr>
<tr>
<td>Brazilian Real</td>
<td>1.7</td>
<td>—</td>
<td>4.05</td>
</tr>
<tr>
<td>British Pound</td>
<td>25.6</td>
<td>—</td>
<td>0.66</td>
</tr>
<tr>
<td>Canadian Dollar</td>
<td>—</td>
<td>9.5</td>
<td>1.32</td>
</tr>
<tr>
<td>Danish Krone</td>
<td>—</td>
<td>3.5</td>
<td>6.61</td>
</tr>
<tr>
<td>Euro</td>
<td>241.7</td>
<td>14.0</td>
<td>0.89</td>
</tr>
<tr>
<td>Hungarian Forint</td>
<td>18.1</td>
<td>—</td>
<td>277.40</td>
</tr>
<tr>
<td>Indian Rupee</td>
<td>10.1</td>
<td>—</td>
<td>65.94</td>
</tr>
<tr>
<td>Japanese Yen</td>
<td>76.6</td>
<td>—</td>
<td>119.23</td>
</tr>
<tr>
<td>Norwegian Krone</td>
<td>0.5</td>
<td>—</td>
<td>8.34</td>
</tr>
<tr>
<td>Swedish Krona</td>
<td>8.5</td>
<td>—</td>
<td>8.31</td>
</tr>
<tr>
<td>Swiss Franc</td>
<td>—</td>
<td>74.3</td>
<td>0.97</td>
</tr>
<tr>
<td>Thai Baht</td>
<td>3.4</td>
<td>—</td>
<td>36.63</td>
</tr>
<tr>
<td>Totals</td>
<td>$ 400.1</td>
<td>$</td>
<td>101.3</td>
</tr>
</tbody>
</table>

**Interest Rate Risk**

Our market risk exposure to changes in interest rates depends primarily on our investment portfolio and borrowings. Our investment portfolio primarily consisted of cash and cash equivalents and available-for-sale investments as of October 2, 2015. The principal amount of cash and cash equivalents at October 2, 2015 totaled $845.5 million with a weighted average interest rate of 0.16%. At October 2, 2015, our available-for-sale investments included loans of $83.9 million (including accrued interest) to CPTC, which bears interest at the LIBOR plus 7.00% per annum with a minimum interest rate of 9.00% per annum. The CPTC loans are carried at fair value.
The 2013 Credit Facility allows us to borrow up to a maximum amount of $500 million under the 2013 Term Loan Facility and $300 million under the 2013 Revolving Credit Facility. Borrowings under the 2013 Term Loan Facility accrue interest either (i) based on a Eurodollar Rate, as defined in the Credit Agreement (the “Eurodollar Rate”), plus a margin of 1.00% to 1.25% based on a leverage ratio involving funded indebtedness and EBITDA or (ii) based upon a base rate of (a) the federal funds rate plus 0.50%, (b) BofA’s announced prime rate, or (c) the Eurodollar Rate plus 1.00%, whichever is highest, plus a margin of up to 0.25% based on the same leverage ratio, depending upon instructions from the Company. Borrowings under the 2013 Revolving Credit Facility accrue interest either (i) based on the Eurodollar Rate plus a margin of 1.25% to 1.50% based on a leverage ratio involving funded indebtedness and EBITDA or (ii) based upon a base rate of (a) the federal funds rate plus 0.50%, (b) BofA’s announced prime rate, or (c) the Eurodollar Rate plus 1.00%, whichever is highest, plus a margin of 0.25% to 0.50% based on the same leverage ratio, depending upon instructions from VMS. Borrowings under the 2013 Revolving Credit Facility have a maturity of approximately 30 days if based on the Eurodollar Rate and the same maturity as the 2013 Term Loan Facility if based on the base rate.

We are affected by market risk exposure primarily through the effect of changes in interest rates on amounts payable under our revolving credit facility and term loan facility. At October 2, 2015, borrowings under the 2013 Term Loan Facility totaled $387.5 million with a weighted average interest rate of 1.32%, borrowings under the 2013 Revolving Credit Facility totaled $90.0 million with a weighted average interest rate of 1.57%. If the amount outstanding under our term loan facility remained at this level for an entire year and interest rates increased or decreased by 1%, our annual interest expense would increase or decrease, respectively, by an additional $4.8 million. See a detailed discussion of our credit facilities in “MD&A – Liquidity and Capital Resources.”

In addition, the Sumitomo Credit Facility allows VMS KK to borrow up to a maximum amount of 3 billion Japanese Yen. Borrowings under the Sumitomo Credit Facility accrue interest based on the basic loan rate announced by the Bank of Japan plus a margin of 0.5% per annum. As of October 2, 2015, the outstanding balance under the Sumitomo Credit Facility was $18.4 million with a weighted average interest of 0.63%.

To date, we have not used derivative financial instruments to hedge the interest rate within our investment portfolio, borrowings, but may consider the use of derivative instruments in the future.

The fair value of our loans to CPTC was $83.9 million at October 2, 2015, which was estimated based on the income approach by using the discounted cash flow model with key assumptions that include discount rates corresponding to the terms and risks associated with the loan to CPTC. In addition, we do not increase the fair value above its par value as ORIX, the loan agent, has the option to purchase these loans from us under the original terms and conditions at par value.

At October 2, 2015, our available-for-sale investments also included other corporate debt securities and a non-U.S. government security with a fair value of $9.1 million and changes in interest rates are expected to have an insignificant impact on the fair value.

The estimated fair value of our term loan payable in fiscal year 2018, at October 2, 2015, approximated its carrying value because the term loan is carried at a market observable interest rate that resets periodically.

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.
### Variant Medical Systems, Inc. and Subsidiaries

#### Consolidated Statements of Earnings

(In thousands, except per share amounts)

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenues:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Product</td>
<td>$2,077,874</td>
<td>$2,083,768</td>
<td>$2,055,718</td>
</tr>
<tr>
<td>Service</td>
<td>1,021,237</td>
<td>966,032</td>
<td>887,179</td>
</tr>
<tr>
<td>Total revenues</td>
<td>3,099,111</td>
<td>3,049,800</td>
<td>2,942,897</td>
</tr>
<tr>
<td><strong>Cost of revenues:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Product</td>
<td>1,390,176</td>
<td>1,314,597</td>
<td>1,295,492</td>
</tr>
<tr>
<td>Service</td>
<td>426,243</td>
<td>433,528</td>
<td>397,718</td>
</tr>
<tr>
<td>Total cost of revenues</td>
<td>1,816,419</td>
<td>1,748,125</td>
<td>1,693,210</td>
</tr>
<tr>
<td><strong>Gross margin</strong></td>
<td>1,282,692</td>
<td>1,301,675</td>
<td>1,249,687</td>
</tr>
<tr>
<td><strong>Operating expenses:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Research and development</td>
<td>245,211</td>
<td>234,840</td>
<td>208,208</td>
</tr>
<tr>
<td>Selling, general and administrative</td>
<td>488,514</td>
<td>470,550</td>
<td>432,589</td>
</tr>
<tr>
<td>Litigation settlement</td>
<td>—</td>
<td>25,130</td>
<td>—</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>733,725</td>
<td>730,520</td>
<td>640,797</td>
</tr>
<tr>
<td><strong>Operating earnings</strong></td>
<td>548,967</td>
<td>571,155</td>
<td>608,890</td>
</tr>
<tr>
<td>Interest income</td>
<td>13,630</td>
<td>10,514</td>
<td>7,322</td>
</tr>
<tr>
<td>Interest expense</td>
<td>(7,935)</td>
<td>(7,159)</td>
<td>(4,129)</td>
</tr>
<tr>
<td><strong>Earnings before taxes</strong></td>
<td>554,662</td>
<td>574,510</td>
<td>612,083</td>
</tr>
<tr>
<td>Taxes on earnings</td>
<td>142,644</td>
<td>170,807</td>
<td>173,835</td>
</tr>
<tr>
<td><strong>Net earnings</strong></td>
<td>412,018</td>
<td>403,703</td>
<td>438,248</td>
</tr>
<tr>
<td>Less: Net earnings attributable to noncontrolling interests</td>
<td>533</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Net earnings attributable to Varian</strong></td>
<td>$411,485</td>
<td>$403,703</td>
<td>$438,248</td>
</tr>
<tr>
<td>Net earnings per share - basic</td>
<td>$4.13</td>
<td>$3.88</td>
<td>$4.04</td>
</tr>
<tr>
<td>Net earnings per share - diluted</td>
<td>$4.09</td>
<td>$3.83</td>
<td>$3.98</td>
</tr>
</tbody>
</table>

**Shares used in the calculation of net earnings per share:**

- Weighted average shares outstanding - basic: 99,679
- Weighted average shares outstanding - diluted: 100,552

*See accompanying notes to the consolidated financial statements.*
<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net earnings</td>
<td>$412,018</td>
<td>$403,703</td>
<td>$438,248</td>
</tr>
<tr>
<td>Other comprehensive earnings (loss), net of tax:</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 gain (loss) arising during the year, net of tax benefit (expense) of $905, $930 and ($1,504)</td>
<td>(4,734)</td>
<td>(9,593)</td>
<td>5,549</td>
</tr>
<tr>
<td>Prior service cost arising during the year, net of tax expense of $0, ($1,240) and $0</td>
<td>—</td>
<td>2,078</td>
<td>—</td>
</tr>
<tr>
<td>Amortization of prior service cost included in net periodic benefit cost, net of tax benefit (expense) of $170, ($27) and $159</td>
<td>(211)</td>
<td>156</td>
<td>(145)</td>
</tr>
<tr>
<td>Amortization, settlement curtailment of net actuarial loss included in net periodic benefit cost, net of tax expense of $(663), ($529) and ($608)</td>
<td>2,935</td>
<td>3,380</td>
<td>3,138</td>
</tr>
<tr>
<td>Unrealized gain (loss) on derivatives:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase in unrealized gain (loss), net of tax expense of $(837), $(1,467) and $(191)</td>
<td>1,402</td>
<td>2,458</td>
<td>318</td>
</tr>
<tr>
<td>Reclassification adjustments, net of tax benefit of $1,413, $479 and $923</td>
<td>(2,367)</td>
<td>(802)</td>
<td>(1,540)</td>
</tr>
<tr>
<td>Unrealized loss on available for sale securities:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase (decrease) in unrealized gain (loss), net of tax benefit of $52, $0 and $0</td>
<td>(112)</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Currency translation adjustment</td>
<td>(24,765)</td>
<td>(16,217)</td>
<td>9,230</td>
</tr>
<tr>
<td>Other comprehensive loss</td>
<td>(27,852)</td>
<td>(18,540)</td>
<td>16,550</td>
</tr>
<tr>
<td>Comprehensive earnings</td>
<td>384,166</td>
<td>385,163</td>
<td>454,798</td>
</tr>
<tr>
<td>Less: Comprehensive earnings attributable to noncontrolling interests</td>
<td>533</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Comprehensive earnings attributable to Varian</td>
<td>$383,633</td>
<td>$385,163</td>
<td>$454,798</td>
</tr>
</tbody>
</table>

*See accompanying notes to the consolidated financial statements.*
VARIAN MEDICAL SYSTEMS, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS

(In thousands, except par values)

<table>
<thead>
<tr>
<th></th>
<th>October 2, 2015</th>
<th>September 26, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assets</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current assets:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$845,468</td>
<td>$849,275</td>
</tr>
<tr>
<td>Short-term investment</td>
<td>—</td>
<td>66,176</td>
</tr>
<tr>
<td>Accounts receivable, net of allowance for doubtful accounts of $21,218 at October 2, 2015 and $20,317 at September 26, 2014</td>
<td>770,920</td>
<td>731,929</td>
</tr>
<tr>
<td>Inventories</td>
<td>612,607</td>
<td>572,261</td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>163,984</td>
<td>148,562</td>
</tr>
<tr>
<td>Deferred tax assets</td>
<td>132,066</td>
<td>125,962</td>
</tr>
<tr>
<td><strong>Total current assets</strong></td>
<td>$2,525,045</td>
<td>$2,494,165</td>
</tr>
<tr>
<td>Property, plant and equipment, net</td>
<td>379,215</td>
<td>337,999</td>
</tr>
<tr>
<td>Goodwill</td>
<td>283,452</td>
<td>240,626</td>
</tr>
<tr>
<td>Other assets</td>
<td>413,036</td>
<td>284,500</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td>$3,600,748</td>
<td>$3,357,290</td>
</tr>
<tr>
<td><strong>Liabilities and Equity</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current liabilities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>$202,918</td>
<td>$187,377</td>
</tr>
<tr>
<td>Deferred revenues</td>
<td>489,775</td>
<td>421,845</td>
</tr>
<tr>
<td>Advance payments from customers</td>
<td>178,265</td>
<td>170,724</td>
</tr>
<tr>
<td>Accrued liabilities</td>
<td>353,500</td>
<td>371,708</td>
</tr>
<tr>
<td>Short term borrowings</td>
<td>108,446</td>
<td>—</td>
</tr>
<tr>
<td>Current maturities of long-term debt</td>
<td>50,000</td>
<td>50,000</td>
</tr>
<tr>
<td><strong>Total current liabilities</strong></td>
<td>$1,382,904</td>
<td>$1,201,654</td>
</tr>
<tr>
<td>Long-term debt</td>
<td>337,500</td>
<td>387,500</td>
</tr>
<tr>
<td>Other long-term liabilities</td>
<td>154,000</td>
<td>151,716</td>
</tr>
<tr>
<td><strong>Total liabilities</strong></td>
<td>$1,874,404</td>
<td>$1,740,870</td>
</tr>
<tr>
<td>Commitments and contingencies (Note 9)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equity:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Varian stockholders' equity:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preferred stock of $1 par value: 1,000 shares authorized; none issued and outstanding</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Common stock of $1 par value: 189,000 shares authorized; 98,070 and 100,942 shares issued and outstanding at October 2, 2015 and at September 26, 2014, respectively</td>
<td>98,070</td>
<td>100,942</td>
</tr>
<tr>
<td>Capital in excess of par value</td>
<td>682,167</td>
<td>642,848</td>
</tr>
<tr>
<td>Retained earnings</td>
<td>1,017,826</td>
<td>931,241</td>
</tr>
<tr>
<td>Accumulated other comprehensive loss</td>
<td>(86,463)</td>
<td>(58,611)</td>
</tr>
<tr>
<td><strong>Total Varian stockholders' equity</strong></td>
<td>1,711,600</td>
<td>1,616,420</td>
</tr>
<tr>
<td>Noncontrolling interests</td>
<td>14,744</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total equity</strong></td>
<td>$1,726,344</td>
<td>$1,616,420</td>
</tr>
<tr>
<td><strong>Total liabilities and equity</strong></td>
<td>$3,600,748</td>
<td>$3,357,290</td>
</tr>
</tbody>
</table>

See accompanying notes to the consolidated financial statements.

77
## VARIAN MEDICAL SYSTEMS, INC. AND SUBSIDIARIES

### CONSOLIDATED STATEMENTS OF CASH FLOWS

### Fiscal Years (In thousands)

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cash flows from operating activities:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net earnings</td>
<td>$412,018</td>
<td>$403,703</td>
<td>$438,248</td>
</tr>
<tr>
<td>Adjustments to reconcile net earnings to net cash provided by operating activities:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Share-based compensation expense</td>
<td>46,303</td>
<td>39,636</td>
<td>42,637</td>
</tr>
<tr>
<td>Tax benefits from exercises of share-based payment awards</td>
<td>12,579</td>
<td>10,900</td>
<td>10,708</td>
</tr>
<tr>
<td>Excess tax benefits from share-based compensation</td>
<td>(12,612)</td>
<td>(10,890)</td>
<td>(9,583)</td>
</tr>
<tr>
<td>Depreciation</td>
<td>60,077</td>
<td>57,678</td>
<td>58,527</td>
</tr>
<tr>
<td>Amortization of intangible assets</td>
<td>8,443</td>
<td>4,779</td>
<td>4,332</td>
</tr>
<tr>
<td>Deferred taxes</td>
<td>5,413</td>
<td>15,872</td>
<td>(3,946)</td>
</tr>
<tr>
<td>Impairment of a privately-held equity investment</td>
<td>—</td>
<td>7,725</td>
<td>—</td>
</tr>
<tr>
<td>Provision for doubtful accounts receivable</td>
<td>1,123</td>
<td>7,150</td>
<td>5,984</td>
</tr>
<tr>
<td>(Income) loss from equity investment in affiliate</td>
<td>(335)</td>
<td>822</td>
<td>(2,461)</td>
</tr>
<tr>
<td>Change in fair value of contingent consideration</td>
<td>(92)</td>
<td>(686)</td>
<td>(5,190)</td>
</tr>
<tr>
<td>Other, net</td>
<td>1,699</td>
<td>382</td>
<td>1,673</td>
</tr>
<tr>
<td><strong>Changes in assets and liabilities, net of effects of acquisitions:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>(79,394)</td>
<td>(74,501)</td>
<td>(43,301)</td>
</tr>
<tr>
<td>Inventories</td>
<td>(41,557)</td>
<td>(43,343)</td>
<td>(76,400)</td>
</tr>
<tr>
<td>Prepaid expenses and other assets</td>
<td>(8,190)</td>
<td>(3,235)</td>
<td>(15,694)</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>6,460</td>
<td>1,971</td>
<td>7,784</td>
</tr>
<tr>
<td>Accrued liabilities and other long-term liabilities</td>
<td>(14,004)</td>
<td>(844)</td>
<td>(32,731)</td>
</tr>
<tr>
<td>Deferred revenues and advance payments from customers</td>
<td>71,625</td>
<td>31,867</td>
<td>74,598</td>
</tr>
<tr>
<td><strong>Net cash provided by operating activities</strong></td>
<td>469,556</td>
<td>448,986</td>
<td>455,185</td>
</tr>
<tr>
<td><strong>Cash flows from investing activities:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purchases of property, plant and equipment</td>
<td>(91,384)</td>
<td>(89,649)</td>
<td>(76,277)</td>
</tr>
<tr>
<td>Investment in available-for-sale securities</td>
<td>(1,761)</td>
<td>(45,209)</td>
<td>(10,044)</td>
</tr>
<tr>
<td>Sale of available-for-sale securities</td>
<td>572</td>
<td>38,075</td>
<td>—</td>
</tr>
<tr>
<td>Acquisitions of businesses, net of cash acquired</td>
<td>(95,302)</td>
<td>(31,500)</td>
<td>—</td>
</tr>
<tr>
<td>Notes receivable</td>
<td>(23,714)</td>
<td>(5,500)</td>
<td>(10,000)</td>
</tr>
<tr>
<td>Other</td>
<td>670</td>
<td>692</td>
<td>50</td>
</tr>
<tr>
<td><strong>Net cash used in investing activities</strong></td>
<td>(210,919)</td>
<td>(133,091)</td>
<td>(96,271)</td>
</tr>
<tr>
<td><strong>Cash flows from financing activities:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Repurchases of common stock</td>
<td>(422,030)</td>
<td>(627,742)</td>
<td>(419,933)</td>
</tr>
<tr>
<td>Proceeds from issuance of common stock to employees</td>
<td>90,975</td>
<td>99,655</td>
<td>129,582</td>
</tr>
<tr>
<td>Excess tax benefits from share-based compensation</td>
<td>12,612</td>
<td>10,900</td>
<td>10,708</td>
</tr>
<tr>
<td>Employees' taxes withheld and paid for restricted stock and restricted stock units</td>
<td>(16,323)</td>
<td>(8,764)</td>
<td>(9,560)</td>
</tr>
<tr>
<td>Borrowings under credit facility agreement</td>
<td>145,000</td>
<td>—</td>
<td>500,000</td>
</tr>
<tr>
<td>Repayments under credit facility agreement and other bank borrowings</td>
<td>(195,000)</td>
<td>(68,750)</td>
<td>—</td>
</tr>
<tr>
<td>Net borrowings under the credit facility agreements with maturities less than 90 days</td>
<td>108,550</td>
<td>—</td>
<td>(155,000)</td>
</tr>
<tr>
<td>Contingent consideration</td>
<td>(3,338)</td>
<td>(698)</td>
<td>(1,052)</td>
</tr>
<tr>
<td>Capital contribution from noncontrolling interest holders</td>
<td>2,872</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Other</td>
<td>(3)</td>
<td>(58)</td>
<td>(1,974)</td>
</tr>
<tr>
<td><strong>Net cash provided by (used in) financing activities</strong></td>
<td>(276,685)</td>
<td>(595,467)</td>
<td>51,646</td>
</tr>
<tr>
<td>Effects of exchange rate changes on cash and cash equivalents</td>
<td>14,241</td>
<td>10,986</td>
<td>2,731</td>
</tr>
<tr>
<td>Net increase (decrease) in cash and cash equivalents</td>
<td>(3,807)</td>
<td>(268,586)</td>
<td>413,291</td>
</tr>
<tr>
<td>Cash and cash equivalents at beginning of period</td>
<td>849,275</td>
<td>1,117,861</td>
<td>704,570</td>
</tr>
<tr>
<td>Cash and cash equivalents at end of period</td>
<td>$845,468</td>
<td>$849,275</td>
<td>$1,117,861</td>
</tr>
</tbody>
</table>

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See accompanying notes to the consolidated financial statements.
VARIAN MEDICAL SYSTEMS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF EQUITY

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Common Stock</th>
<th>Capital in Excess of Par Value</th>
<th>Retained Earnings</th>
<th>Accumulated Other Comprehensive Loss</th>
<th>Total Varian Stockholders' Equity</th>
<th>Noncontrolling Interests</th>
<th>Total Equity</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Balances at September 28, 2012</strong></td>
<td>109,407</td>
<td>$109,407</td>
<td>$563,875</td>
<td>$893,115</td>
<td>$(56,621)</td>
<td>$1,509,776</td>
<td>—</td>
</tr>
<tr>
<td>Other comprehensive earnings</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>16,550</td>
<td>16,550</td>
<td>—</td>
<td>16,550</td>
</tr>
<tr>
<td>Issuance of common stock</td>
<td>3,222</td>
<td>3,222</td>
<td>126,437</td>
<td>—</td>
<td>—</td>
<td>129,659</td>
<td>—</td>
</tr>
<tr>
<td>Tax benefits from exercises of share-based payment awards</td>
<td>—</td>
<td>—</td>
<td>10,708</td>
<td>—</td>
<td>—</td>
<td>10,708</td>
<td>—</td>
</tr>
<tr>
<td>Shares repurchased for tax withholdings on vesting of restricted stock and restricted stock units</td>
<td>(138)</td>
<td>(138)</td>
<td>(9,422)</td>
<td>—</td>
<td>—</td>
<td>(9,560)</td>
<td>—</td>
</tr>
<tr>
<td>Share-based compensation expense</td>
<td>—</td>
<td>—</td>
<td>42,130</td>
<td>—</td>
<td>—</td>
<td>42,130</td>
<td>—</td>
</tr>
<tr>
<td><strong>Balances at September 27, 2013</strong></td>
<td>106,491</td>
<td>106,491</td>
<td>637,084</td>
<td>1,010,343</td>
<td>(40,071)</td>
<td>1,713,847</td>
<td>—</td>
</tr>
<tr>
<td>Net earnings</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>403,703</td>
<td>—</td>
<td>403,703</td>
<td>—</td>
</tr>
<tr>
<td>Other comprehensive loss</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(18,540)</td>
<td>(18,540)</td>
<td>—</td>
<td>(18,540)</td>
</tr>
<tr>
<td>Tax benefits from exercises of share-based payment awards</td>
<td>—</td>
<td>—</td>
<td>10,900</td>
<td>—</td>
<td>—</td>
<td>10,900</td>
<td>—</td>
</tr>
<tr>
<td>Shares repurchased for tax withholdings on vesting of restricted stock and restricted stock units</td>
<td>(116)</td>
<td>(116)</td>
<td>(8,648)</td>
<td>—</td>
<td>—</td>
<td>(8,764)</td>
<td>—</td>
</tr>
<tr>
<td>Repurchases of common stock</td>
<td>(7,750)</td>
<td>(7,750)</td>
<td>(133,462)</td>
<td>(482,805)</td>
<td>—</td>
<td>(624,017)</td>
<td>—</td>
</tr>
<tr>
<td><strong>Balances at September 26, 2014</strong></td>
<td>100,942</td>
<td>100,942</td>
<td>642,848</td>
<td>931,241</td>
<td>(58,611)</td>
<td>1,616,420</td>
<td>—</td>
</tr>
<tr>
<td>Net earnings</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>411,485</td>
<td>—</td>
<td>411,485</td>
<td>533</td>
</tr>
<tr>
<td>Other comprehensive loss</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(27,852)</td>
<td>(27,852)</td>
<td>—</td>
<td>(27,852)</td>
</tr>
<tr>
<td>Issuance of common stock</td>
<td>2,136</td>
<td>2,136</td>
<td>88,888</td>
<td>—</td>
<td>—</td>
<td>91,024</td>
<td>—</td>
</tr>
<tr>
<td>Tax benefits from exercises of share-based payment awards</td>
<td>—</td>
<td>—</td>
<td>12,579</td>
<td>—</td>
<td>—</td>
<td>12,579</td>
<td>—</td>
</tr>
<tr>
<td>Shares repurchased for tax withholdings on vesting of restricted stock and restricted stock units</td>
<td>(183)</td>
<td>(183)</td>
<td>(16,140)</td>
<td>—</td>
<td>—</td>
<td>(16,323)</td>
<td>—</td>
</tr>
<tr>
<td>Share-based compensation expense</td>
<td>—</td>
<td>—</td>
<td>46,303</td>
<td>—</td>
<td>—</td>
<td>46,303</td>
<td>—</td>
</tr>
<tr>
<td>Repurchases of common stock</td>
<td>(4,825)</td>
<td>(4,825)</td>
<td>(92,311)</td>
<td>(324,900)</td>
<td>—</td>
<td>(422,036)</td>
<td>—</td>
</tr>
<tr>
<td>Acquisition of MeVis Medical Solutions AG</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>10,218</td>
<td>—</td>
</tr>
<tr>
<td>Capital contributions from minority shareholders</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>3,993</td>
<td>—</td>
</tr>
<tr>
<td><strong>Balances at October 2, 2015</strong></td>
<td>98,070</td>
<td>98,070</td>
<td>682,167</td>
<td>1,017,826</td>
<td>(86,463)</td>
<td>1,711,600</td>
<td>14,744</td>
</tr>
</tbody>
</table>

See accompanying notes to the consolidated financial statements.
1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Description of Business
Varian Medical Systems, Inc. ("VMS") and subsidiaries (collectively, the "Company") designs, manufactures, sells and services hardware 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 imaging components for use in a range of applications, including radiographic or fluoroscopic imaging, mammography, special procedures, computed tomography, computer aided diagnostics and industrial applications. In addition, the Company designs, manufactures, sells and services linear accelerators, image processing software and image detection products for security and inspection purposes. The Company also develops, designs, manufactures, 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").

Reclassifications
Certain reclassifications have been made to the amounts for prior years in order to conform to the current year’s presentation.

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 2015 was the 53-week period that ended on October 2, 2015. Fiscal year 2014 was the 52-week period that ended on September 26, 2014 and fiscal year 2013 was the 52-week period that ended on September 27, 2013.

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 9, "Commitments and Contingencies" for additional information.

Principles of Consolidation
The consolidated financial statements include those of VMS and its wholly-owned and majority-owned or controlled subsidiaries. Intercompany balances, transactions and stock holdings have been eliminated in consolidation.

Consolidation of Variable Interest Entities
For entities in which the Company has variable interests, the Company 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. If 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 2015, 2014 and 2013, the Company did not consolidate any variable interest entities, because the Company was not the primary beneficiary.
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.

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 balances 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 balances into U.S. dollars that were included in the Consolidated Statements of Earnings were $(2.0) million, $(0.5) million and $0.7 million in fiscal years 2015, 2014 and 2013, 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). See Note 8, "Derivative Instruments and Hedging Activities" regarding the Company’s hedging activities and derivative instruments. Also see Note 3, "Fair Value" regarding valuation of the Company’s derivative instruments.

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.

Available-For-Sale Investments and Notes Receivable
The Company has investments in securities that are classified as available-for-sale investments, and which are recorded on the Consolidated Balance Sheets at fair value. Unrealized gains and losses on these investments are included as a separate component of accumulated other comprehensive loss, net of tax, on the Consolidated Balance Sheets. The Company classifies its available-for-sale securities as short-term or long-term based on the nature of the investment, its maturity date and its availability for use in current operations. The Company monitors its available-for-sale securities 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 did not record any impairment of its available-for-sale investments for fiscal years 2015, 2014 and 2013.

The Company advances notes to third parties, including its customers. The Company assesses these notes for collectibility and regularly reviews them for allowance for losses by considering internal factors such as historical experience, credit quality, age of the receivable balances as well as external factors such as economic conditions that may affect the note holder's ability to pay. The Company did not record any allowance for loss on notes receivable for fiscal years 2015, 2014 and 2013.

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 under the equity method of accounting. Equity investments in privately-held companies in which the Company holds less than a 20% ownership interest or in which the Company does not have the ability to exercise significant influence are accounted for under the cost method of accounting. The Company’s equity investments in privately-held companies are included in other assets on the Consolidated Balance Sheets. See Note 2, “Balance Sheet Components”. 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 carrying value of equity investments in privately-held companies accounted for under the equity method of accounting was $49.7 million for both the fiscal year ended October 2, 2015 and September 26, 2014. The Company did not have any impairment loss on equity investments in privately-held companies accounted for under the equity method of accounting for fiscal years 2015, 2014 and 2013. Additionally, the Company has an investment in Augmenix, Inc. (“Augmenix”), a privately-held company, which is accounted for under the cost-method. During fiscal year 2014, the Company recognized a $7.7 million charge relating to the impairment of a portion of the investment in Augmenix. Equity investments accounted for under the cost method, including Augmenix, totaled $15.0 million for both the fiscal years ended October 2, 2015 and September 26, 2014.
Concentration of Credit Risk

Financial instruments that potentially expose the Company to concentrations of credit risk consist principally of cash, cash equivalents, available-for-sale investments, trade accounts receivable, notes 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 available-for-sale investments and notes receivable, the Company performs a periodic credit evaluation of various counterparties. In addition, the Company will be 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. The 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, security and inspection products and Varian Particle Therapy (“VPT”) customers to often 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) or 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 internal use software during the application development stage are capitalized in accordance with guidance on internal-use software. 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 their estimated useful lives or remaining lease terms. Buildings are depreciated over twenty or thirty 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 their estimated useful lives or remaining 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 of property, plant and equipment 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 two to seventeen years generally using the straight-line method. In-process research and development (“IPR&D”) is initially capitalized at fair value as an intangible asset with an indefinite life and assessed for impairment thereafter. When an IPR&D project is completed, the IPR&D is reclassified as an amortizable purchased intangible asset and amortized over the asset’s estimated useful life.

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 2015, 2014 and 2013.
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. If the Company determines that a quantitative analysis is necessary, 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 a combination of income and market approaches. The income approach is based on the present value of estimated future cash flows of the reporting units and the market approach is based on a market multiple calculated for each business unit based on market data of other companies engaged in similar business. 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 2015, 2014 and 2013, the Company performed the annual goodwill impairment testing for the four reporting units that carried goodwill namely (i) Oncology Systems, (ii) X-ray tubes and flat panel products, (iii) Security and inspection products, and (iv) VPT, and found no impairment. For all four reporting units, based upon the most recent annual goodwill analysis performed by the Company as of the end of the third quarter of fiscal year 2015, either step one of the impairment test was not completed based on evaluation of qualitative factors or, for those which step one was completed, the fair value was substantially in excess of carrying value.

**Loss Contingencies**

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 inside and outside the United States, arising in the ordinary course of its business or otherwise. 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 it believes will result in a probable loss.

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.

**Product Warranty**

The Company warrants most of its products for a specific period of time, usually 12 months from installation, 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.

**Revenue Recognition**

The Company’s revenues are derived primarily from the sale of hardware and software products, and services from the Company’s Oncology Systems, Imaging Components and VPT businesses. The Company recognizes its revenues net of any value added or sales tax and net of sales discounts.

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. As discussed below, certain of the Oncology Systems 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. The Imaging Components business generally sells its X-ray components (including X-ray tubes, flat panel detectors and image processing tools and security and inspection products) on a stand-alone basis. However, the Imaging Components business occasionally sells its flat panel detectors, X-ray tubes and imaging processing tools as a package that is optimized for digital X-ray imaging and 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 security and inspection products within the Imaging Components business. Revenues related to
service contracts usually starts after the expiration of the warranty period for non-software products or upon acceptance for software products.

The Company recognizes contract revenues under the percentage-of-completion method for equipment sold by VPT. See “Contracts for Customized Equipment” below for more details.

For a multiple element arrangement that includes software and non-software deliverables which includes service contracts, 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

Non-software products include hardware products, software components that function together with the hardware components to deliver the product’s essential functionality, as well as service contracts. Except as described below under “Service,” 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 vendor-specific objective evidence (“VSOE”) of selling price, if it exists; otherwise, third-party evidence of selling price (“TPE”). If neither VSOE nor TPE of selling price exists for a deliverable the Company uses the deliverable’s estimated selling prices (“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 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 typically at the time of shipment or delivery, depending upon the 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 standard non-software sales contracts, “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 contracts allow 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. Occasionally for a deliverable not yet being sold separately, the Company may initially establish VSOE 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 competing 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 or TPE of selling prices, ESPs are used as the basis of their selling prices. The Company estimates selling prices following an established process that considers market conditions, including the product offerings and pricing strategies of competitors, 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 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, 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 product installation services.

The Company does not have installation obligations for X-ray tubes, digital image detectors, spare parts, security and inspection products, and for certain hardware Oncology Systems. 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 terms of the contract, provided that all other revenue recognition criteria have been met.

**Software Products**

Except as described below under “Service,” 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).

For those software products that are not sold stand-alone or for which VSOE cannot be established or maintained, all software revenue under the contract will be deferred until the software product(s) that lack VSOE are all delivered. If the only undelivered software element that lacks VSOE is maintenance and support then the software revenue would be recognized ratably over the term of the maintenance and support arrangement.

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 Imaging Components and certain brachytherapy 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 proton therapy systems and proton therapy system commissioning contracts are recognized in accordance with contract accounting. The Company recognizes contract revenues under the percentage-of-completion method which 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 revenues are adjusted in the same period.
Contracts accounted for in accordance with contract accounting are billable upon achievement of milestones specified in the contracts or upon customer acceptance. Costs incurred and revenues recognized under the percentage-of-completion method in excess of customer billings are included in accounts receivable on the Consolidated Balance Sheets. Customer billings in excess of costs incurred and revenue recognized under the percentage-of-completion method, which typically reflect initial down payments, are included in advance payments from customers on the Consolidated Balance Sheets. Costs incurred and revenues recognized in excess of customer billings were $79.1 million as of October 2, 2015 and $57.2 million as of September 26, 2014. Customer billings in excess of costs incurred and revenue recognized were $53.8 million as of October 2, 2015 and $52.6 million as of September 26, 2014.

Service

Service revenues include revenues from hardware and software service contracts, bundled support arrangements, paid services and trainings, and parts that are sold by the service department. Revenues allocated to service contracts are generally recognized ratably over the period of the related contracts. For proton therapy systems service contracts, revenues subject 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, security and inspection and VPT customers to provide a down payment prior to transfer of risk of loss of ordered products. These payments are recorded as advance payments from customers on the Consolidated Balance Sheets.

Deferred Revenue

Deferred revenue includes (i) the amount billed, billable or received applicable to non-software products for which installation and/or acceptance have not been completed (ii) the amount billed, billable or received applicable to shipment of software products but for which installation and/or final acceptance have not been completed and (iii) the amount billed or billable for service contracts for which the services have not been rendered. Deferred costs associated with deferred revenues are included in inventories on the Consolidated Balance Sheets.

Medical Device Excise Tax

In accordance with the Patient Protection and Affordable Care Act, effective January 1, 2013, the Company began to incur a 2.3% excise tax on sales of medical devices in the United States. The medical device excise tax is included in the cost of revenues in the Consolidated Statements of Earnings for fiscal year 2015 and 2014, net of any amounts directly billed to customers for this tax.

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, restricted stock units and performance units based on their fair values.

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 the guidance on share-based compensation. The Company values VMS’s 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, which was developed for use in estimating the fair value of traded options that have no vesting restrictions and are fully transferable. Share-based compensation expense 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 service period. The Company values performance units using the Monte Carlo simulation model on the date of grant with assumptions that includes the historical volatility of shares of VMS common stock, as well as the shares of common stock of peer companies. In addition, the Company estimates the probability that certain performance conditions that affect the vesting of performance units will be achieved, and recognizes expense only for those awards expected to vest. Both the Black-Scholes option-pricing model and the Monte Carlo simulation model require the input of certain assumptions and changes in the assumptions can materially affect the fair value estimates of share-based payment awards.
Share-based compensation expense recognized is based on the value of the portion of share-based payment awards that is ultimately expected to vest. The Company attributes the value of share-based compensation to expense using the straight-line method. The Company considers only the direct tax impacts of share-based compensation awards when calculating the amount of tax windfalls or shortfalls.

**Earnings per share**

Basic net earnings per share is computed by dividing net earnings attributable to Varian 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 attributable to Varian by the sum of the weighted average number of common shares outstanding and dilutive common shares under the treasury stock method. The Company excludes potentially dilutive common shares (consisting of shares underlying stock options, restricted stock units, performance units and the Employee Stock Purchase Plan) from the computation of diluted weighted average shares outstanding if the per share value, either the exercise price of the awards or the sum of (a) the exercise price of the awards 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 awards would be antidilutive to earnings per share.

**Shipping and Handling Costs**

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

**Research and Development**

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. 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, change in unrealized gain or loss on derivative instruments designated as cash flow hedges, net of taxes (see Note 8, "Derivative Instruments and Hedging Activities"), change in unrealized gain or loss on available for sale securities, net of taxes (see Note 2, "Balance Sheet Components"), 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 10, "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 Standards or Updates Not Yet Effective**

In November 2015, the Financial Accounting Standards Board (“FASB”) issued an amendment to its accounting guidance related to balance sheet classification of deferred taxes. The amendment requires that deferred tax liabilities and assets be classified as noncurrent in the statement of financial position, thereby simplifying the current guidance that requires an entity to separate deferred liabilities and assets into current and noncurrent amounts. The amendment will be effective for the Company beginning in its first quarter of fiscal year 2018. Early adoption is permitted. The amendment can be adopted either prospectively or retrospectively. The Company is evaluating the impact of adopting this guidance to its consolidated financial statements.
In September 2015, the FASB issued a new accounting standard that eliminates the requirement to restate prior period financial statements for measurement period adjustments following a business combination. The new guidance requires that the cumulative impact of a measurement period adjustment including the impact on prior periods be recognized in the reporting period in which the adjustment is identified along with additional disclosures. The new guidance will be effective for the Company beginning in its first quarter of fiscal year 2017. The new guidance is required to be adopted prospectively with early adoption permitted for financial statements that have not yet been made available for issuance. The new guidance is not expected to have a material impact to the Company’s consolidated financial statements.

In July 2015, the FASB issued an amendment to its accounting guidance related to inventory measurement. The amendment requires inventory measured using first-in, first-out (FIFO) or average cost to be subsequently measured at the lower of cost and net realizable value, thereby simplifying the current guidance that requires an entity to measure inventory at the lower of cost or market. The amendment will be effective for the Company beginning in its first quarter of fiscal year 2018 and is required to be adopted prospectively. Early adoption is permitted. The new guidance is not expected to have a material impact to the Company’s consolidated financial statements.

In April 2015, the FASB issued an amendment to its accounting guidance related to revenue recognition. The amendment clarifies that the software license element of a cloud computing arrangement should be accounted for consistent with the acquisition of other software licenses. The amendment will be effective for the Company beginning in its first quarter of fiscal year 2017. Early adoption is permitted. The amendment can be adopted either prospectively or retrospectively. The Company is evaluating the impact of adopting this guidance to its consolidated financial statements.

In April 2015, the FASB issued an amendment to its accounting guidance related to retirement benefits. The amendment provides a practical expedient that permits an entity with a fiscal year-end that does not coincide with a month-end to measure defined benefit plan assets and obligations using the month-end that is closest to the entity’s fiscal year-end and apply that practical expedient consistently from year to year. The amendment also provides a practical expedient that permits an entity that has a significant event in an interim period to remeasure defined benefit plan assets and obligations using the month-end that is closest to the date of the significant event. The amendment will be effective for the Company beginning in its first quarter of fiscal year 2017 and is required to be applied on a retrospective basis. Early adoption is permitted. The amendment is not expected to have a material impact to the Company’s consolidated financial statements.

In March 2015, the FASB issued an amendment to its accounting guidance related to presentation of debt issuance costs. The amendment requires that debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability. The amendment will be effective for the Company beginning in its first quarter of fiscal year 2017. Early adoption is not permitted. The amendment is required to be applied on a retrospective basis. In August 2015, the FASB further clarified that entities are permitted to defer and present debt issuance costs related to line-of-credit arrangements as assets. These amendments are not expected to have a material impact to the Company’s consolidated financial statements.

In February 2015, the FASB issued an amendment to its accounting guidance related to consolidation. The amendment modifies the analysis that a reporting entity must perform to determine whether it should consolidate certain types of legal entities. The amendment will be effective for the Company beginning in its first quarter of fiscal year 2017. Early adoption is permitted. The amendment permits the use of either the retrospective or cumulative effect transition method. The new guidance is not expected to have a material impact to the Company’s consolidated financial statements.

In June 2014, the FASB issued an amendment to its accounting guidance related to stock-based compensation. The amendment requires that a performance target that could be achieved after the requisite service period be treated as a performance condition that affects vesting, rather than a condition that affects the grant-date fair value. The new guidance will be effective for the Company beginning in its first quarter of fiscal year 2017. Early adoption is permitted. The amendment can be applied on a prospective basis to all share-based payments granted or modified on or after the effective date. Entities will also be provided an option to apply the guidance on a modified retrospective basis to existing awards. The amendment is not expected to have a material impact to the Company's consolidated financial statements.

In May 2014, the FASB issued an amendment to its accounting guidance related to revenue recognition. The amendment sets forth a single, comprehensive revenue recognition model for all contracts with customers to improve comparability. The amendment requires revenue recognition to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. In June 2015, the FASB approved a one-year deferral of the amendment. The new guidance will be effective for the Company beginning in its first quarter of fiscal year 2019, with early adoption permitted, but not before the first quarter of fiscal year 2018. The amendment can be applied either retrospectively to each prior reporting period presented (i.e., full retrospective adoption) or with the
cumulative effect of initially applying the update recognized at the date of the initial application (i.e., modified retrospective adoption) along with additional disclosures. The Company is evaluating the impact of adopting this guidance to its consolidated financial statements.

2. BALANCE SHEET COMPONENTS

The following tables summarize the Company's available-for-sale securities (in millions):

### October 2, 2015

<table>
<thead>
<tr>
<th>Available-for-sale securities:</th>
<th>Amortized Cost</th>
<th>Gross Unrealized Gains</th>
<th>Gross Unrealized Losses</th>
<th>Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate debt securities:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CPTC loans</td>
<td>$ 83.9</td>
<td>$</td>
<td>$</td>
<td>$ 83.9</td>
</tr>
<tr>
<td>Other</td>
<td>8.6</td>
<td>0.1</td>
<td>(0.3)</td>
<td>8.4</td>
</tr>
<tr>
<td>Non-U.S. government security</td>
<td>0.7</td>
<td></td>
<td></td>
<td>0.7</td>
</tr>
<tr>
<td>Total available-for-sale securities</td>
<td>$ 93.2</td>
<td>$ 0.1</td>
<td>$ (0.3)</td>
<td>$ 93.0</td>
</tr>
</tbody>
</table>

### September 26, 2014

<table>
<thead>
<tr>
<th>Available-for-sale securities:</th>
<th>Amortized Cost</th>
<th>Gross Unrealized Gains</th>
<th>Gross Unrealized Losses</th>
<th>Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate debt securities:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CPTC loans</td>
<td>$ 75.6</td>
<td>$</td>
<td>$</td>
<td>$ 75.6</td>
</tr>
<tr>
<td>Total available-for-sale securities</td>
<td>$ 75.6</td>
<td>$</td>
<td>$</td>
<td>$ 75.6</td>
</tr>
</tbody>
</table>

See Note 16, “VPT Loans” for more information on California Proton Treatment Center, LLC ("CPTC") loans.

As of October 2, 2015, available-for-sale securities are included in other assets because their maturity dates are greater than one year, and the Company did not intend to sell all or a portion of its loans in the next fiscal year. As of October 2, 2015, the Company anticipates that it will recover the entire amortized cost basis of all of its available-for-sale securities and determined that no other-than-temporary impairments were required to be recognized.

### Inventories:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>October 2, 2015</th>
<th>September 26, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Raw materials and parts</td>
<td>$ 348.3</td>
<td>$ 296.1</td>
</tr>
<tr>
<td>Work-in-process</td>
<td>98.2</td>
<td>124.5</td>
</tr>
<tr>
<td>Finished goods</td>
<td>166.1</td>
<td>151.7</td>
</tr>
<tr>
<td>Total inventories</td>
<td>$ 612.6</td>
<td>$ 572.3</td>
</tr>
</tbody>
</table>

### Property, plant and equipment:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>October 2, 2015</th>
<th>September 26, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land and land improvements</td>
<td>$ 49.1</td>
<td>$ 45.1</td>
</tr>
<tr>
<td>Buildings and leasehold improvements</td>
<td>267.0</td>
<td>260.8</td>
</tr>
<tr>
<td>Machinery and equipment</td>
<td>437.2</td>
<td>425.4</td>
</tr>
<tr>
<td>Construction in progress</td>
<td>99.6</td>
<td>44.7</td>
</tr>
<tr>
<td>Total property, plant and equipment, net</td>
<td>$ 852.9</td>
<td>$ 776.0</td>
</tr>
<tr>
<td>Accumulated depreciation and amortization</td>
<td>(473.7)</td>
<td>(438.0)</td>
</tr>
<tr>
<td>Total property, plant and equipment, net</td>
<td>$ 379.2</td>
<td>$ 338.0</td>
</tr>
<tr>
<td></td>
<td>October 2, 2015</td>
<td>September 26, 2014</td>
</tr>
<tr>
<td>----------------------</td>
<td>-----------------</td>
<td>--------------------</td>
</tr>
<tr>
<td><strong>Other assets:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long-term available-for-sale securities</td>
<td>$ 93.0</td>
<td>$ 9.4</td>
</tr>
<tr>
<td>Long-term receivables</td>
<td>77.0</td>
<td>49.1</td>
</tr>
<tr>
<td>Intangible assets</td>
<td>72.6</td>
<td>40.9</td>
</tr>
<tr>
<td>Investments in privately-held companies</td>
<td>64.7</td>
<td>64.7</td>
</tr>
<tr>
<td>Deferred Compensation Plan (“DCP”) assets</td>
<td>56.6</td>
<td>59.6</td>
</tr>
<tr>
<td>Long-term deferred tax assets</td>
<td>9.4</td>
<td>11.5</td>
</tr>
<tr>
<td>Other</td>
<td>39.7</td>
<td>49.3</td>
</tr>
<tr>
<td><strong>Total other assets</strong></td>
<td>$ 413.0</td>
<td>$ 284.5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>October 2, 2015</th>
<th>September 26, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Accrued liabilities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accrued compensation and benefits</td>
<td>$ 101.5</td>
<td>$ 121.4</td>
</tr>
<tr>
<td>DCP liabilities</td>
<td>57.3</td>
<td>57.9</td>
</tr>
<tr>
<td>Product warranty</td>
<td>43.9</td>
<td>47.3</td>
</tr>
<tr>
<td>Income taxes payable</td>
<td>36.4</td>
<td>30.9</td>
</tr>
<tr>
<td>Current deferred tax liabilities</td>
<td>6.4</td>
<td>10.8</td>
</tr>
<tr>
<td>Other</td>
<td>108.0</td>
<td>103.4</td>
</tr>
<tr>
<td><strong>Total accrued liabilities</strong></td>
<td>$ 353.5</td>
<td>$ 371.7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>October 2, 2015</th>
<th>September 26, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Other long-term liabilities:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long-term income taxes payable</td>
<td>$ 44.5</td>
<td>$ 55.2</td>
</tr>
<tr>
<td>Long-term deferred income taxes</td>
<td>47.5</td>
<td>31.5</td>
</tr>
<tr>
<td>Other</td>
<td>62.0</td>
<td>65.0</td>
</tr>
<tr>
<td><strong>Total other long-term liabilities</strong></td>
<td>$ 154.0</td>
<td>$ 151.7</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.
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.

Assets/Liabilities Measured at Fair Value on a Recurring Basis

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.
### Fair Value Measurement Using Type of Instruments

**Quoted Prices in Active Markets for Identical Instruments (Level 1)**  
**Significant Other Observable Inputs (Level 2)**  
**Significant Unobservable Inputs (Level 3)**  
**Total Balance**

<table>
<thead>
<tr>
<th>Type of Instruments</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 October 2, 2015:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Available-for-sale securities:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corporate debt securities</td>
<td>$ — $ 8.4</td>
<td>$ 83.9</td>
<td>$ 92.3</td>
<td></td>
</tr>
<tr>
<td>Non-U.S. government security</td>
<td>— 0.7</td>
<td>—</td>
<td>0.7</td>
<td></td>
</tr>
<tr>
<td>Total assets measured at fair value</td>
<td>$ — 9.1</td>
<td>$ 83.9</td>
<td>$ 93.0</td>
<td></td>
</tr>
<tr>
<td><strong>Liabilities at October 2, 2015:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contingent consideration</td>
<td>$ — $ (4.1)</td>
<td></td>
<td>$ (4.1)</td>
<td></td>
</tr>
<tr>
<td>Total liabilities measured at fair value</td>
<td>$ — $ (4.1)</td>
<td></td>
<td>$ (4.1)</td>
<td></td>
</tr>
<tr>
<td><strong>Assets at September 26, 2014:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Available-for-sale securities:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corporate debt securities</td>
<td>$ — $ 75.6</td>
<td></td>
<td>$ 75.6</td>
<td></td>
</tr>
<tr>
<td>Derivative assets</td>
<td>— 1.5</td>
<td>—</td>
<td>1.5</td>
<td></td>
</tr>
<tr>
<td>Total assets measured at fair value</td>
<td>$ — 1.5</td>
<td>$ 75.6</td>
<td>$ 77.1</td>
<td></td>
</tr>
<tr>
<td><strong>Liabilities at September 26, 2014:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contingent consideration</td>
<td>$ — $ (7.5)</td>
<td></td>
<td>$ (7.5)</td>
<td></td>
</tr>
<tr>
<td>Total liabilities measured at fair value</td>
<td>$ — $ (7.5)</td>
<td></td>
<td>$ (7.5)</td>
<td></td>
</tr>
</tbody>
</table>

At October 2, 2015, the fair value of the Company's derivative instruments was immaterial. The Company's Level 3 corporate debt securities, the CPTC loans, were included in other assets at October 2, 2015, and short-term investment and other assets at September 26, 2014, other corporate debt securities and the non-U.S. government security were included in other assets at October 2, 2015, derivative assets were included in prepaid expenses and other current assets at September 26, 2014, and contingent consideration was included in accrued liabilities and other long-term liabilities for both the fiscal years ended October 2, 2015 and September 26, 2014 on the Consolidated Balance Sheets.

The fair value of the Company's Level 2 other corporate debt securities and non-U.S. government security are priced using quoted market prices for similar instruments or non-binding market prices that are corroborated by observable market data. 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 generally short-term in nature, typically one month to thirteen months in duration.

The fair value of the Company's Level 3 corporate debt securities, the CPTC loans, is based on the income approach by using the discounted cash flow model with key assumptions that include discount rates corresponding to the terms and risks associated with the loans to CPTC. If the estimated discount rates used were to increase or decrease, the fair value of the debt securities would decrease or increase, respectively. However, the Company does not increase the fair value of these securities above their par values as ORIX Capital Markets, LLC (“ORIX”), the loan agent, has the option to purchase these loans from the Company under the original terms and conditions at par value.

The Company measures the fair value of its Level 3 contingent consideration liabilities based on the income approach by using a discounted cash flow model with key assumptions that include estimated sales units or revenues of the acquired business or completion of certain milestone targets during the earn-out period, volatility, and estimated discount rates corresponding to the periods of expected payments. If the estimated sales units, revenues or probability of completing certain milestones were to increase or decrease during the respective earn-out period, the fair value of the contingent consideration would increase or decrease, respectively. If the estimated discount rates were to increase or decrease, the fair value of contingent consideration would decrease or increase, respectively. Changes in volatility may result in an increase or decrease in the fair value of

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contingent consideration. The Company recognized a gain related to the change of the fair value of its contingent consideration liability of $0.1 million, $0.7 million and $5.2 million in fiscal years 2015, 2014 and 2013, respectively.

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>(In millions)</th>
<th>CPTC Loans</th>
<th>Contingent Consideration</th>
<th>Option to Purchase a Privately-Held Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at September 27, 2013</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additions (1)</td>
<td>$62.7</td>
<td>$(2.5)</td>
<td>$1.4</td>
</tr>
<tr>
<td>Sale of a portion of CPTC Loans (2)</td>
<td>51.0</td>
<td>$(6.2)</td>
<td></td>
</tr>
<tr>
<td>Settlements (3)</td>
<td></td>
<td>0.5</td>
<td></td>
</tr>
<tr>
<td>Change in fair value recognized in earnings</td>
<td></td>
<td>0.7</td>
<td>(1.4)</td>
</tr>
<tr>
<td>Balance at September 26, 2014</td>
<td>75.6</td>
<td>(7.5)</td>
<td></td>
</tr>
<tr>
<td>Additions (1)</td>
<td>8.3</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Settlements (3)</td>
<td></td>
<td>3.3</td>
<td></td>
</tr>
<tr>
<td>Change in fair value recognized in earnings</td>
<td></td>
<td>0.1</td>
<td></td>
</tr>
<tr>
<td>Balance at October 2, 2015</td>
<td>$83.9</td>
<td>$(4.1)</td>
<td></td>
</tr>
</tbody>
</table>

(1) Amounts reported under CPTC loans include accrued interest.
(2) Refer to Note 16, “VPT Loans”
(3) Amounts reported under Contingent Consideration represent cash payments to settle contingent consideration liabilities.

There were no transfers of assets or liabilities between fair value measurement levels during fiscal years 2015, 2014 and 2013. Transfers between fair value measurement levels are recognized at the end of the reporting period.

**Assets Measured at Fair Value on a Nonrecurring Basis**

During the fiscal year ended September 26, 2014, the Company recognized a $7.7 million charge relating to the impairment of a portion of its investment in Augmenix. The impairment charge of $7.7 million included a $1.4 million write-off of the option to purchase the remaining equity interest of Augmenix, upon its expiry. This option was previously measured at fair value on a recurring basis. The impairment charge, representing the difference between the net book value and the fair value of the investment as a result of the evaluation, was recorded within selling, general and administrative expenses. There were no impairment charges incurred during fiscal years 2015 and 2013.

For the fiscal year ended September 26, 2014, the Company’s assets that were measured at fair value on a nonrecurring basis are summarized below:

<table>
<thead>
<tr>
<th>(in millions)</th>
<th>Carrying Value as of September 26, 2014</th>
<th>Total Losses for Fiscal Year 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity Investment in Augmenix</td>
<td>$7.3</td>
<td>$6.3</td>
</tr>
</tbody>
</table>

The fair value measurement of the impaired privately-held investment was classified as Level 3 because significant unobservable inputs were used in the valuation due to the absence of quoted market prices and inherent lack of liquidity. Significant unobservable inputs, which included financial condition and recent financing activities of the investees, reflected the assumptions market participants would use in pricing these assets.

**Fair Value of Other Financial Instruments**

The fair values of certain of the Company’s financial instruments, including bank deposits included in cash equivalents, accounts receivable, net of allowance for doubtful accounts, short-term notes receivable, accounts payable, and short-term borrowings approximate their carrying amounts due to their short maturities.
As of both October 2, 2015 and September 26, 2014, the fair value of current maturities of the long-term debt approximated its carrying value of $50.0 million due to its short-term maturity. The fair value of the long-term debt, payable in installments through fiscal year 2018, approximated its carrying value of $337.5 million and $387.5 million at October 2, 2015 and September 26, 2014, respectively, because it is carried at a market observable interest rate that resets periodically and is categorized as Level 2 in the fair value hierarchy.

The fair value of the outstanding long-term notes receivable approximated their carrying value of $30.9 million and $15.0 million at October 2, 2015 and September 26, 2014, respectively, because it is based on terms of recent comparable transactions and is categorized as Level 3 in the fair value hierarchy.

4. RECEIVABLES

The following table summarizes the Company's accounts receivable and notes receivable as of October 2, 2015 and September 26, 2014:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>October 2, 2015</th>
<th>September 26, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts receivable, gross</td>
<td>$838.2</td>
<td>$786.3</td>
</tr>
<tr>
<td>Allowance for doubtful accounts</td>
<td>$(21.2)</td>
<td>$(20.3)</td>
</tr>
<tr>
<td>Accounts receivable, net</td>
<td>$817.0</td>
<td>$766.0</td>
</tr>
<tr>
<td>Short-term</td>
<td>$770.9</td>
<td>$731.9</td>
</tr>
<tr>
<td>Long-term</td>
<td>$46.1</td>
<td>$34.1</td>
</tr>
<tr>
<td>Notes receivable</td>
<td>$40.9</td>
<td>$15.0</td>
</tr>
<tr>
<td>Short-term</td>
<td>$10.0</td>
<td>$—</td>
</tr>
<tr>
<td>Long-term</td>
<td>$30.9</td>
<td>$15.0</td>
</tr>
</tbody>
</table>

A financing receivable represents a financing arrangement with a contractual right to receive money, on demand or on fixed or determinable dates, and that is recognized as an asset on the Company’s Consolidated Balance Sheets. The Company’s financing receivables consist of accounts receivable with contractual maturities of more than one year and notes receivable. A small portion of the Company's financing accounts receivables were within the short-term accounts receivable.

Alliance for doubtful accounts is entirely related to the short-term accounts receivable for both the fiscal years ended October 2, 2015 and September 26, 2014. There was no significant activity in the allowance for doubtful financing accounts receivable during fiscal years 2015, 2014 and 2013.

See Note 16, "VPT Loans" for more information on the Company's long-term notes receivable balances.

5. GOODWILL AND INTANGIBLE ASSETS

The following table reflects the activity of goodwill by reportable operating segment:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Oncology Systems</th>
<th>Imaging Components</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at September 27, 2013</td>
<td>$132.0</td>
<td>$33.2</td>
<td>$60.1</td>
<td>$225.3</td>
</tr>
<tr>
<td>Business combinations</td>
<td>16.3</td>
<td>2.8</td>
<td>—</td>
<td>19.1</td>
</tr>
<tr>
<td>Foreign currency translation adjustments</td>
<td>—</td>
<td>—</td>
<td>(3.8)</td>
<td>(3.8)</td>
</tr>
<tr>
<td>Balance at September 26, 2014</td>
<td>148.3</td>
<td>36.0</td>
<td>56.3</td>
<td>240.6</td>
</tr>
<tr>
<td>Business combinations</td>
<td>10.5</td>
<td>38.7</td>
<td>—</td>
<td>49.2</td>
</tr>
<tr>
<td>Foreign currency translation adjustments</td>
<td>—</td>
<td>—</td>
<td>(6.3)</td>
<td>(6.3)</td>
</tr>
<tr>
<td>Balance at October 2, 2015</td>
<td>$158.8</td>
<td>$74.7</td>
<td>$50.0</td>
<td>$283.5</td>
</tr>
</tbody>
</table>
The following table reflects the gross carrying amount and accumulated amortization of the Company’s finite-lived intangible assets included in other assets on the Consolidated Balance Sheets:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>October 2, 2015</th>
<th>September 26, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquired existing technology</td>
<td>$71.7</td>
<td>$54.6</td>
</tr>
<tr>
<td>Patents, licenses and other</td>
<td>35.3</td>
<td>28.8</td>
</tr>
<tr>
<td>Customer contracts and supplier relationship</td>
<td>20.1</td>
<td>12.4</td>
</tr>
<tr>
<td>Accumulated amortization</td>
<td>(65.1)</td>
<td>(56.9)</td>
</tr>
<tr>
<td>Net carrying amount</td>
<td>$62.0</td>
<td>$38.9</td>
</tr>
</tbody>
</table>

As of October 2, 2015 and September 26, 2014, the Company also had $10.6 million and $2.0 million, respectively, of IPR&D assets acquired as part of the Company’s business acquisitions. See Note 15, “Business Combinations” for additional information. Amortization expense for intangible assets was $8.4 million, $4.8 million and $4.3 million for fiscal years 2015, 2014 and 2013, respectively. The Company estimates that the amortization expense for intangible assets for fiscal years 2016 through 2020, and thereafter, will be as follows (in millions): $13.1, $13.4, $9.6, $9.0, $7.7, and $9.2, respectively.

6. RELATED PARTY TRANSACTIONS

VMS has a 40% ownership interest in 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 Imaging Components’ digital image detectors and for its Oncology Systems’ On-Board Imager® and PortalVision™ imaging products. In accordance with the dpiX Holding agreement, net profits or losses are allocated 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 or losses in inventory purchased from dpiX are eliminated until realized by VMS. VMS recorded income on the equity investment in dpiX Holding of $0.1 million in fiscal year 2015, a loss on the equity investment in dpiX Holding of $0.8 million in fiscal year 2014, and income on the equity investment in dpiX Holding of $2.5 million in fiscal year 2013. Income and loss on the equity investment in dpiX Holding is 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 on the Consolidated Balance Sheets, was $47.3 million at October 2, 2015 and $49.7 million at September 26, 2014.

During fiscal years 2015, 2014 and 2013, the Company purchased glass transistor arrays from dpiX totaling $21.3 million, $20.9 million and $25.9 million, respectively. These purchases of glass transistor arrays are included as a component of inventories on the Consolidated Balance Sheets or cost of revenues – product in the Consolidated Statements of Earnings for these fiscal years.

In October 2013, VMS entered into an amended agreement with dpiX and other parties that, among other things, provides the Company with the right to 50% of dpiX’s total manufacturing capacity produced after January 1, 2014. The amended agreement requires the Company to pay for 50% of the fixed costs (as defined in the amended agreement), as determined at the beginning of each calendar year. As of October 2, 2015, the Company estimated it has fixed cost commitments of $4.4 million related to this amended agreement for the first quarter of fiscal year 2016. The fixed cost commitment for future periods will be determined and approved by the dpiX board of directors at the beginning of each calendar year. The amended agreement will continue unless the ownership structure of dpiX changes (as defined in the amended agreement).

The Company has determined that dpiX is a variable interest entity because at-risk equity holders, as a group, lack the characteristics of a controlling financial interest. Majority votes are required to direct the manufacturing activities, legal operations and other activities that most significantly affect dpiX’s economic performance. The Company does not have majority voting rights and no power to direct the activities of dpiX and therefore is not the primary beneficiary of dpiX.
7. BORROWINGS

The following table summarizes the Company's short-term and long-term debt:

<table>
<thead>
<tr>
<th>(In millions, except for percentages)</th>
<th>October 2, 2015</th>
<th>September 26, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount</td>
<td>Weighted-Average Interest Rate</td>
<td>Amount</td>
</tr>
<tr>
<td>Current portion of 2013 Term Loan Facility</td>
<td>$50.0</td>
<td>1.32%</td>
</tr>
<tr>
<td>2013 Revolving Credit Facility</td>
<td>90.0</td>
<td>1.57%</td>
</tr>
<tr>
<td>Sumitomo Credit Facility</td>
<td>18.4</td>
<td>0.63%</td>
</tr>
<tr>
<td>Total short-term debt</td>
<td>$158.4</td>
<td></td>
</tr>
</tbody>
</table>

| Long-term debt:                          |                  |                  |
| 2013 Term Loan Facility                   | $337.5           | 1.32%             | $387.5           | 1.28%             |
| Total long-term debt                     | $337.5           |                  | $387.5           |                  |

On August 27, 2013, VMS entered into a Credit Agreement (as amended to date) with certain lenders and Bank of America, N.A. (“BoFA”) as administrative agent. The Credit Agreement provides for (i) a five-year term loan facility in an aggregate principal amount of up to $500 million (the “2013 Term Loan Facility”) and (ii) a five-year revolving credit facility in an aggregate principal amount of up to $300 million (the “2013 Revolving Credit Facility” and, collectively with the 2013 Term Loan Facility, the “2013 Credit Facility”). The 2013 Revolving Credit Facility also includes a $50 million sub-facility for the issuance of letters of credit and permits swing line loans of up to $25 million. The aggregate commitments under the 2013 Term Loan Facility may be increased by up to $100 million and the aggregate commitments under the 2013 Revolving Credit Facility may be increased by up to $200 million, subject to certain conditions being met, including lender approval. The 2013 Credit Facility contains provisions that limit the Company’s ability to pay cash dividends. The proceeds of the 2013 Credit Facility may be used for working capital, capital expenditures, Company share repurchases, acquisitions and other corporate purposes.

Borrowings under the 2013 Term Loan Facility accrue interest either (i) based on a Eurodollar Rate, as defined in the Credit Agreement (the “Eurodollar Rate”), plus a margin of 1.00% to 1.25% based on a leverage ratio involving funded indebtedness and EBITDA, or (ii) based upon a base rate of (a) the federal funds rate plus 0.50%, (b) BoFA’s announced prime rate, or (c) the Eurodollar Rate plus 1.00%, whichever is highest, plus a margin of up to 0.25% based on the same leverage ratio, depending upon instructions from the Company.

Borrowings under the 2013 Revolving Credit Facility accrue interest either (i) based on the Eurodollar Rate plus a margin of 1.25% to 1.50% based on a leverage ratio involving funded indebtedness and EBITDA, or (ii) based upon a base rate of (a) the federal funds rate plus 0.50%, (b) BoFA’s announced prime rate, or (c) the Eurodollar Rate plus 1.00%, whichever is highest, plus a margin of 0.25% to 0.50% based on the same leverage ratio, depending upon instructions from the Company. Borrowings under the 2013 Revolving Credit Facility have a maturity of approximately 30 days if based on the Eurodollar Rate and the same maturity as the 2013 Term Loan Facility if based on the base rate.

The Company must pay a commitment fee on the unused portion of the 2013 Revolving Credit Facility at a rate from 0.15% to 0.275% based on a leverage ratio. The Company may prepay, reduce or terminate the commitments without penalty. Swing line loans under the 2013 Credit Facility will bear interest at the base rate plus the then applicable margin for base rate loans. The Company paid commitment fees of $0.6 million, $0.6 million, and $0.3 million in fiscal years 2015, 2014 and 2013, respectively, related to its borrowings.

Subject to certain limitations on the amount secured, the Company has pledged 65% of the voting shares issued by Varian Medical Systems Nederland Holdings B.V., a wholly owned subsidiary, as security for the 2013 Credit Facility. This share pledge also secures all hedging or treasury management obligations entered into by the Company with a Lender. The Credit Agreement provides that certain material domestic subsidiaries must guarantee the 2013 Credit Facility, subject to certain limitations on the amount secured. As of October 2, 2015, no VMS subsidiaries have been required to guaranty the 2013 Credit Facility.

The Credit Agreement contains affirmative and negative covenants applicable to the Company and its subsidiaries that are typical for credit facilities of this type, and that are subject to materiality and other qualifications, carve-outs, baskets and
exceptions. The Company has also agreed to maintain certain financial covenants including (i) a maximum consolidated leverage ratio, involving funded indebtedness and EBITDA (earnings before interest, tax and depreciation and amortization), and (ii) a minimum cash flow coverage ratio. The Company was in compliance with all covenants under the Credit Agreement for all periods within these consolidated financial statements in which it was in existence.

Prior to the 2013 Credit Facility, VMS had a credit agreement entered into as of April 27, 2012 (the “2012 Credit Facility”) with certain lenders and BofA as administrative agent which provided for a revolving credit facility that enabled the Company to borrow and have outstanding at any given time a maximum of $300 million. On August 27, 2013, VMS replaced the 2012 Credit Facility with the 2013 Revolving Credit Facility, terminating the 2012 Credit Facility and repaying in full the approximately $148.0 million then-outstanding principal balance, plus accrued interest and fees.

VMS’s Japanese subsidiary (“VMS KK”) has an unsecured uncommitted credit agreement with Sumitomo that enables VMS KK to borrow and have outstanding at any given time a maximum of 3.0 billion Japanese Yen (the “Sumitomo Credit Facility”). In February 2015, the Sumitomo Credit Facility was extended and will expire in February 2016. Borrowings under the Sumitomo Credit Facility accrue interest based on the basic loan rate announced by the Bank of Japan plus a margin of 0.5% per annum.

Interest paid on borrowings was $7.1 million, $7.0 million and $2.9 million for fiscal year 2015, 2014 and 2013, respectively. As of October 2, 2015, future principal payments for long-term debt due in August 2018 for fiscal years 2016, 2017, and 2018, and are as follows (in millions): $50.0, $50.0, and $287.5, respectively.

In November 2015, the Company amended its Credit Agreement to increase the aggregate commitments under the 2013 Revolving Credit Facility from $300 million to $500 million, reduce commitment fees and interest rate margins applicable to borrowings and increase the maximum consolidated leverage ratio that the Company must maintain. The additional funds may be used for working capital, capital expenditures, Company share repurchases, acquisitions and other corporate purposes.

Under the amended Credit Agreement, the 2013 Term Loan Facility will accrue interest (i) based on a Eurodollar Rate, as defined in the Credit Agreement (the “Eurodollar Rate”), plus a margin of 0.875% to 1.125% based on a consolidated leverage ratio involving funded indebtedness and EBITDA, or (ii) based upon a base rate of (a) the federal funds rate plus 0.50%, (b) BofA’s announced prime rate, or (c) the Eurodollar Rate plus 1.00%, whichever is highest, plus a margin of 0% to 0.125% based on the same consolidated leverage ratio, depending upon instructions from the Company.

Under the amended Credit Agreement, the 2013 Revolving Credit Facility will accrue interest either (i) based on the Eurodollar Rate plus a margin of 1.125% to 1.375% based on the consolidated leverage ratio, or (ii) based upon a base rate of (a) the federal funds rate plus 0.50%, (b) BofA’s announced prime rate, or (c) the Eurodollar Rate plus 1.00%, whichever is highest, plus a margin of 0.125% to 0.375% based on the consolidated leverage ratio, depending upon instructions from the Company.

The Company must now pay a reduced commitment fee on the unused portion of the 2013 Revolving Credit Facility at a rate from 0.125% to 0.20%. There were no other significant changes to the Credit Agreement as a result of this amendment.

8. 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.

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

<table>
<thead>
<tr>
<th>Asset Derivatives</th>
<th>October 2, 2015</th>
<th>September 26, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Derivatives designated as hedging instruments:</td>
<td>Balance Sheet Location</td>
<td>Fair Value</td>
</tr>
<tr>
<td>Foreign exchange forward contracts</td>
<td>Prepaid expenses and other current assets</td>
<td>$ —</td>
</tr>
<tr>
<td>Total derivatives</td>
<td></td>
<td>$ —</td>
</tr>
</tbody>
</table>

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As of October 2, 2015 and September 26, 2014, the fair value of the Company's derivatives not designated as hedging instruments was immaterial. See Note 3, "Fair Value" for the valuation of the Company's derivative instruments. Also, see Note 1, "Summary of Significant Accounting Policies" for the credit risk associated with the Company’s derivative instruments.

**Offsetting of Derivatives**

The Company presents its derivative assets and derivative liabilities on a gross basis on the Consolidated Balance Sheets. However, under agreements containing provisions on netting with certain counterparties of foreign exchange contracts, subject to applicable requirements, the Company is allowed to net-settle transactions on the same date in the same currency, with a single net amount payable by one party to the other. As of October 2, 2015 and September 26, 2014, there were no potential effects of rights of setoff associated with derivative instruments. The Company is neither required to pledge nor entitled to receive cash collateral related to these derivative transactions.

**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 portion of cash flow hedges gain or loss excluded from the assessment of effectiveness and the ineffective portion of the cash flow hedges were not material in fiscal years 2015, 2014, and 2013.

The following table presents the amounts, before tax, recognized in accumulated other comprehensive loss on the Consolidated Balance Sheets and reclassified into revenues in the Consolidated Statements of Earnings in the period in 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 time value amounts excluded from the assessment of effectiveness in cost of revenues in the Consolidated Statements of Earnings.

The following table presents the amounts, before tax, recognized in accumulated other comprehensive loss on 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:

| (In millions) | Gain Recognized in Other Comprehensive Income (Effective Portion) | Location of Gain (Loss) Reclassified from Accumulated Other Comprehensive Income into Net Earnings (Effective Portion) | Gain Reclassified from Accumulated Other Comprehensive Income into Net Earnings (Effective Portion) |
|---------------|---------------------------------------------------------------|-------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------
|               | Fiscal Years 2015 2014 2013 |                                                                                                  | Fiscal Years 2015 2014 2013                                                                                                                    |
| Foreign currency forward contracts | $ 2.2  $ 3.9  $ 0.5 | Revenues                                                                                          | $ 3.8  $ 1.3  $ 2.5                                                                                                                  |

The portion of cash flow hedges gain or loss excluded from the assessment of effectiveness and the ineffective portion of the cash flow hedges were not material in fiscal years 2015, 2014 and 2013.
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 a maturity of approximately one month, and are based on the net forecasted balance sheet exposure. 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:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>October 2, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Notional Value Sold</td>
</tr>
<tr>
<td>Australian Dollar</td>
<td>$13.9</td>
</tr>
<tr>
<td>Brazilian Real</td>
<td>1.7</td>
</tr>
<tr>
<td>British Pound</td>
<td>25.6</td>
</tr>
<tr>
<td>Canadian Dollar</td>
<td>—</td>
</tr>
<tr>
<td>Danish Krone</td>
<td>—</td>
</tr>
<tr>
<td>Euro</td>
<td>241.7</td>
</tr>
<tr>
<td>Hungarian Forint</td>
<td>18.1</td>
</tr>
<tr>
<td>Indian Rupee</td>
<td>10.1</td>
</tr>
<tr>
<td>Japanese Yen</td>
<td>76.6</td>
</tr>
<tr>
<td>Norwegian Krone</td>
<td>0.5</td>
</tr>
<tr>
<td>Swedish Krona</td>
<td>8.5</td>
</tr>
<tr>
<td>Swiss Franc</td>
<td>—</td>
</tr>
<tr>
<td>Thai Baht</td>
<td>3.4</td>
</tr>
<tr>
<td>Totals</td>
<td>$400.1</td>
</tr>
</tbody>
</table>

The following table presents the gains recognized in the Consolidated Statements of Earnings related to the foreign currency forward contracts that are not designated as hedging instruments.

<table>
<thead>
<tr>
<th>Location of Gain Recognized in Income on Derivative</th>
<th>Fiscal Years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Selling, general and administrative expenses</td>
<td>$27.6</td>
</tr>
</tbody>
</table>

The gains (losses) on these derivative instruments were significantly offset by the gains (losses) resulting from the re-measurement 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 master agreements which contain 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. As of October 2, 2015 and September 26, 2014, the Company did not have any outstanding derivative instruments with credit-risk-related contingent features that were in a net liability position.
9. 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 October 2, 2015, 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 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>2015</td>
</tr>
<tr>
<td>Accrued product warranty, at beginning of period</td>
<td>$49.3</td>
</tr>
<tr>
<td>Charged to cost of revenues</td>
<td>50.8</td>
</tr>
<tr>
<td>Actual product warranty expenditures</td>
<td>(54.2)</td>
</tr>
<tr>
<td>Accrued product warranty, at end of period</td>
<td>$45.9</td>
</tr>
</tbody>
</table>

Long-term accrued product warranty costs were $2.0 million at both October 2, 2015 and September 26, 2014, respectively, and are included in other long-term liabilities on the Consolidated Balance Sheets.

Lease Commitments
At October 2, 2015, the Company was committed to minimum rentals under non-cancelable operating leases (including rent escalation clauses) for fiscal years 2016 through 2020 and thereafter, as follows (in millions): $22.2, $18.4, $13.0, $9.2, $7.3 and $20.9, respectively. Rental expenses were $28.8 million, $28.7 million and $26.0 million for fiscal years 2015, 2014 and 2013, respectively.

Other Commitments
As of October 2, 2015, the Company's outstanding commitment under the loan to Maryland Proton Therapy Center (“MPTC”) was $22.8 million, to be paid in four installments of $5.7 million each on June 30, 2016, September 30, 2016, December 30, 2016 and March 31, 2017. As of October 2, 2015, the Company's remaining commitment under the loan related to the New York Proton Center (“NYPC”) was $72.8 million, to be paid primarily through fiscal year 2018. See Note 16, "VPT Loans" for additional information.

Subsequent to fiscal year 2015, in October 2015, the Company committed to grant the noncontrolling shareholders of MeVis Medical Solutions AG (“MeVis”): (1) an annual recurring net compensation of €0.95 per MeVis share starting from January 1, 2015 and (2) a put right for their MeVis shares at €19.77 per MeVis share. As of October 2, 2015, noncontrolling shareholders together held approximately 482,000 shares of MeVis, representing 26.5% of the outstanding shares. See Note 15, “Business Combinations” for additional information.

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 a small portion of the total amount 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, $1.2 million and $1.0 million (net of amounts borne by VI and VSEA) during fiscal years 2015, 2014 and 2013, 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 October 2, 2015, 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 $1.4 million to $9.9 million. The time frames over which these cleanup project costs are estimated vary, ranging from one year up to thirty years as of October 2, 2015. Management believes that no amount in that range is more probable of being incurred than any other amount and therefore had accrued $1.4 million for these cleanup projects as of October 2, 2015. 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 October 2, 2015, 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 $5.5 million to $26.0 million. The time frames over which these costs are estimated to be incurred vary, ranging from one to thirty years as of October 2, 2015. 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 $8.8 million at October 2, 2015. Accordingly, the Company had accrued $7.4 million for these costs as of October 2, 2015, which represented the best estimate discounted at 4%, net of inflation. This accrual is in addition to the $1.4 million described in the preceding paragraph.

The table that follows presents information about the Company’s liabilities for future environmental costs at October 2, 2015, based on estimates as of that date.

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Recurring Costs</th>
<th>Non-Recurring Costs</th>
<th>Total Anticipated Future Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Years:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2016</td>
<td>$0.5</td>
<td>$1.2</td>
<td>$1.7</td>
</tr>
<tr>
<td>2017</td>
<td>0.5</td>
<td>0.6</td>
<td>1.1</td>
</tr>
<tr>
<td>2018</td>
<td>0.4</td>
<td>0.6</td>
<td>1.0</td>
</tr>
<tr>
<td>2019</td>
<td>0.5</td>
<td>0.2</td>
<td>0.7</td>
</tr>
<tr>
<td>2020</td>
<td>0.4</td>
<td>0.7</td>
<td>1.1</td>
</tr>
<tr>
<td>Thereafter</td>
<td>3.7</td>
<td>1.1</td>
<td>4.8</td>
</tr>
<tr>
<td>Total costs</td>
<td>$6.0</td>
<td>$4.4</td>
<td>10.4</td>
</tr>
<tr>
<td>Less imputed interest</td>
<td></td>
<td></td>
<td>1.6</td>
</tr>
<tr>
<td>Reserve amount</td>
<td></td>
<td></td>
<td>$8.8</td>
</tr>
</tbody>
</table>

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 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. Receivables from that insurer amounted to $2.1 million at October 2, 2015 and $2.2 million at September 26, 2014, with the respective current portion included in prepaid expenses and other current assets and the respective noncurrent portion included in other assets on 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.

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 inside and outside the United States, arising in the ordinary course of its business or otherwise. 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 (including, among other things, probable settlement value). A loss or a range of loss is disclosed when it is reasonably possible that a material loss will be incurred and can be estimated or when it is reasonably possible that the amount of a loss, when material, will exceed the recorded provision.

In September 2015, Elekta Ltd. and William Beaumont Hospital served the Company with a complaint alleging infringement of three patents related to certain aspects of cone beam imaging in conjunction with radiotherapy. During September 2015 and October 2015, the Company filed several complaints in the U.S. and foreign courts and the U.S. International Trade Commission against Elekta AB and its subsidiaries alleging infringement of various patents relating to certain aspects of cone beam imaging, cone-beam imaging gantries, volumetric modulated arc therapy (“VMAT”), and MR-Linac. These lawsuits are in the initial stages and at this time, the Company is unable to predict the ultimate outcome of this matter, and therefore no amounts have been accrued as of October 2, 2015.

In June 2015, a foreign subsidiary of the Company was charged by the Department for Investigation and Penal Action of Lisbon with alleged improper activities relating to three tenders of medical equipment in Portugal during the period of 2003 to 2009. The Company has requested a judicial review available under Portuguese criminal procedure processes as to whether or not such changes are proper under Portuguese law. The Company previously undertook an internal investigation of this matter and voluntarily disclosed the results of this investigation to the U.S. Department of Justice and the U.S. Securities and Exchange Commission. At this time, the Company is unable to predict the ultimate outcome of this matter, and therefore no amounts have been accrued as of October 2, 2015.

In April 2007, a patent infringement lawsuit was initiated by the University of Pittsburgh of the Commonwealth System of Higher Education (the “University of Pittsburgh”) regarding the Company’s Real-time Position Management™ (“RPM”)
technology. In January 2014, the Company entered into a settlement agreement with the University of Pittsburgh and in the third quarter of fiscal year 2014 paid $35.6 million in full settlement of the lawsuit. Prior to the beginning of the second quarter of fiscal year 2014, the Company had accrued in aggregate approximately $5.0 million for the low end of the range of the probable settlement value for this matter. In the second quarter of fiscal year 2014, the Company accrued an additional $25.1 million of the $35.6 million for all damages and interest related to the case and in the third quarter of fiscal year 2014 recorded the remaining amount of approximately $5.5 million for future royalties as prepaid royalties. The amount of prepaid royalties is being amortized beginning with the third quarter of fiscal year 2014, over the remaining life of the patent of approximately two and a half years.

In addition to the above, the Company is involved in other legal matters. However, such matters are subject to many uncertainties and outcomes are not predictable with assurance. The Company is unable to estimate a range of reasonably possible losses with respect to such matters. There can be no assurances as to whether the Company will become subject to significant additional claims and liabilities with respect to ongoing or future proceedings. If actual liabilities significantly exceed the estimates made, the Company’s consolidated financial position, results of operations or cash flows could be materially adversely affected. Legal expenses relating to legal matters are expensed as incurred.

Restructuring Charges

As part of the Company’s plan to enhance operational performance through productivity initiatives, the Company offered an enhanced retirement program to its qualifying employees across all reporting segments during the fourth quarter of fiscal year 2014. The program required the participating employees to submit their applications by October 10, 2014, and as a result, the restructuring charges relating to this program were primarily incurred in the first quarter of fiscal year 2015. The Company also incurred additional restructuring charges across all reportable segments for workforce reductions in fiscal year 2015. In fiscal year 2015, the Company incurred $13.3 million in restructuring charges in connection with the above mentioned restructuring programs, and a significant portion of these charges were paid in cash in fiscal year 2015. The restructuring charges are included in selling, general and administrative expenses in the Consolidated Statements of Earnings. As of October 2, 2015, any remaining restructuring charges related to these restructuring programs are not expected to be material and are expected to be substantially completed in fiscal year 2016.

There were no restructuring charges incurred in fiscal year 2014. In a similar enhanced retirement program offered in fiscal year 2013, the Company incurred restructuring charges of $6.7 million during fiscal year 2013.

10. 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 25% of their eligible base compensation to the Retirement Plan on a pre-tax or Roth basis (plus up to an additional 15% on an after-tax basis if they have more than one year of service with the Company) and all or a portion of their bonuses 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 Company also has 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 4% to 100% of their eligible base compensation to the U.K. Savings Plan subject to a maximum annual amount determined by certain tax rules. The Company matches participant contributions up to 6% of participants’ eligible base compensation, based on the participants’ level of contributions under this U.K. Savings Plan. All matching contributions vest immediately.

The Company sponsors seven defined benefit pension plans for regular full time employees in Germany, Japan, Switzerland, the Philippines and the United Kingdom. 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.

Total retirement, post-retirement benefit plan and defined benefit plan expense for all retirement plans amounted to $32.1 million, $28.6 million and $29.0 million for fiscal years 2015, 2014 and 2013, respectively. Two of the Company’s defined
benefit pension plans including one in Germany and one in the Philippines and the Company's post-retirement benefit plan are not presented in any of the following information as they are not material.

**Obligations and Funded Status**

The following table presents the funded status of the defined benefit pension plans:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>October 2, 2015</th>
<th>September 26, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Change in benefit obligation:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Benefit obligation - beginning of fiscal year</td>
<td>$207.6</td>
<td>$195.7</td>
</tr>
<tr>
<td>Service cost</td>
<td>5.7</td>
<td>4.1</td>
</tr>
<tr>
<td>Interest cost</td>
<td>4.4</td>
<td>6.1</td>
</tr>
<tr>
<td>Plan participants’ contributions</td>
<td>9.9</td>
<td>7.8</td>
</tr>
<tr>
<td>Plan amendment</td>
<td>(1.1)</td>
<td>—</td>
</tr>
<tr>
<td>Plan settlement</td>
<td>(4.0)</td>
<td>(7.8)</td>
</tr>
<tr>
<td>Actuarial loss</td>
<td>3.7</td>
<td>14.2</td>
</tr>
<tr>
<td>Foreign currency changes</td>
<td>(8.9)</td>
<td>(7.7)</td>
</tr>
<tr>
<td>Benefit and expense payments</td>
<td>(7.0)</td>
<td>(4.8)</td>
</tr>
<tr>
<td>Benefit obligation - end of fiscal year</td>
<td>$210.3</td>
<td>$207.6</td>
</tr>
<tr>
<td><strong>Change in plan assets:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plan assets - beginning of fiscal year</td>
<td>$188.6</td>
<td>$180.8</td>
</tr>
<tr>
<td>Employer contributions</td>
<td>6.9</td>
<td>7.2</td>
</tr>
<tr>
<td>Actual return on plan assets</td>
<td>4.1</td>
<td>11.8</td>
</tr>
<tr>
<td>Plan participants’ contributions</td>
<td>9.9</td>
<td>7.8</td>
</tr>
<tr>
<td>Plan settlement</td>
<td>(4.0)</td>
<td>(7.8)</td>
</tr>
<tr>
<td>Foreign currency changes</td>
<td>(8.6)</td>
<td>(6.4)</td>
</tr>
<tr>
<td>Benefit and expense payments</td>
<td>(7.0)</td>
<td>(4.8)</td>
</tr>
<tr>
<td>Plan assets - end of fiscal year</td>
<td>$189.9</td>
<td>$188.6</td>
</tr>
<tr>
<td><strong>Funded status</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$ (20.4)</td>
<td>$ (19.0)</td>
</tr>
</tbody>
</table>

The following table presents the amounts recognized in accumulated other comprehensive loss (before tax) for the defined benefit pension plans:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>October 2, 2015</th>
<th>September 26, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior service credit (cost)</td>
<td>$ 0.7</td>
<td>$ (0.6)</td>
</tr>
<tr>
<td>Net loss</td>
<td>(58.9)</td>
<td>(55.7)</td>
</tr>
<tr>
<td>Accumulated other comprehensive loss</td>
<td>(58.2)</td>
<td>(56.3)</td>
</tr>
</tbody>
</table>

The following table presents the projected benefit obligation, accumulated benefit obligation and fair value of plan assets for those defined benefit pension plans where accumulated benefit obligation exceeded the fair value of plan assets:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>October 2, 2015</th>
<th>September 26, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Projected benefit obligation</td>
<td>$ 15.6</td>
<td>$ 16.9</td>
</tr>
<tr>
<td>Accumulated benefit obligation</td>
<td>$ 14.2</td>
<td>$ 15.8</td>
</tr>
<tr>
<td>Fair value of plan assets</td>
<td>$ 13.2</td>
<td>$ 14.7</td>
</tr>
</tbody>
</table>

The accumulated benefit obligation for all defined benefit pension plans was $175.6 million and $172.7 million at October 2, 2015 and September 26, 2014, respectively.
Components of Net Periodic Benefit Cost and Other Amounts Recognized in Other Comprehensive (Earnings) Loss

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

<table>
<thead>
<tr>
<th>(In millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fiscal Years</strong></td>
</tr>
<tr>
<td><strong>Net Periodic Benefit Costs:</strong></td>
</tr>
<tr>
<td>Service cost</td>
</tr>
<tr>
<td>Interest cost</td>
</tr>
<tr>
<td>Loss due to settlement or curtailment</td>
</tr>
<tr>
<td>Expected return on assets</td>
</tr>
<tr>
<td>Amortization of prior service cost</td>
</tr>
<tr>
<td>Recognized actuarial loss</td>
</tr>
<tr>
<td><strong>Net periodic benefit cost</strong></td>
</tr>
<tr>
<td><strong>Other Amounts Recognized in Other Comprehensive (Earnings) Loss:</strong></td>
</tr>
<tr>
<td>New prior service (credit) cost</td>
</tr>
<tr>
<td>Net (gain) loss arising during the year</td>
</tr>
<tr>
<td>Amortization of prior service cost</td>
</tr>
<tr>
<td>Amortization, settlement and curtailment of net actuarial loss</td>
</tr>
<tr>
<td><strong>Total recognized in other comprehensive (earnings) loss</strong></td>
</tr>
<tr>
<td><strong>Total recognized in net periodic benefit cost and other comprehensive (earnings) loss</strong></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 2016 related to the Company’s defined benefit pension plans are as follows:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior service credit (cost)</td>
<td>$—</td>
</tr>
<tr>
<td>Net loss</td>
<td>(2.9)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$(2.9)</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 plans were as follows:

<table>
<thead>
<tr>
<th><strong>Net Periodic Benefit Cost</strong></th>
<th><strong>Fiscal Years</strong></th>
<th><strong>2015</strong></th>
<th><strong>2014</strong></th>
<th><strong>2013</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Discount rate</td>
<td>2.58%</td>
<td>3.11%</td>
<td>2.94%</td>
<td></td>
</tr>
<tr>
<td>Rate of compensation increase</td>
<td>2.45%</td>
<td>2.51%</td>
<td>2.37%</td>
<td></td>
</tr>
<tr>
<td>Expected long-term return on assets</td>
<td>3.90%</td>
<td>4.21%</td>
<td>3.82%</td>
<td></td>
</tr>
</tbody>
</table>

The assumptions used to measure the benefit obligation for the Company’s defined benefit pension plans were as follows:

<table>
<thead>
<tr>
<th><strong>Benefit Obligation</strong></th>
<th><strong>October 2, 2015</strong></th>
<th><strong>September 26, 2014</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Discount rate</td>
<td>2.09%</td>
<td>2.77%</td>
</tr>
<tr>
<td>Rate of compensation increase</td>
<td>2.50%</td>
<td>2.45%</td>
</tr>
</tbody>
</table>

The benefit obligation of defined benefit pension plans was measured as of October 2, 2015. The discount rate was adjusted as of October 2, 2015 to a range of 1.10% to 3.90%, primarily based on the current effective yield of long-term corporate bonds.
that are of high quality with satisfactory liquidity and credit rating with durations corresponding to the expected duration of the benefit obligations. Additionally, the rate of projected compensation increase was adjusted as of October 2, 2015 to a range of 1.75% to 3.60% reflecting expected inflation levels and the Company’s future outlook.

During the fourth quarter of fiscal year 2015, 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. 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.

**Plan Assets**

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 expectancies 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 2015 was 30.4% equities, 59.5% debt and fixed income assets and 10.1% 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 (Level 1)</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 October 2, 2015:</strong></td>
<td></td>
<td></td>
<td></td>
<td></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>$ 42.7</td>
<td>$ —</td>
<td>$ 42.7</td>
</tr>
<tr>
<td>Mutual funds - debt</td>
<td>—</td>
<td>35.5</td>
<td>—</td>
<td>35.5</td>
</tr>
<tr>
<td>Mutual funds - real estate</td>
<td>—</td>
<td>4.4</td>
<td>—</td>
<td>4.4</td>
</tr>
<tr>
<td>Other</td>
<td>—</td>
<td>3.4</td>
<td>—</td>
<td>3.4</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>102.9</td>
<td>—</td>
<td>102.9</td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>1.0</td>
<td>—</td>
<td>—</td>
<td>1.0</td>
</tr>
<tr>
<td>Total</td>
<td>$ 1.0</td>
<td>$ 188.9</td>
<td>$ —</td>
<td>$ 189.9</td>
</tr>
<tr>
<td><strong>As of September 26, 2014:</strong></td>
<td></td>
<td></td>
<td></td>
<td></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>$ 51.7</td>
<td>$ —</td>
<td>$ 51.7</td>
</tr>
<tr>
<td>Mutual funds - debt</td>
<td>—</td>
<td>32.5</td>
<td>—</td>
<td>32.5</td>
</tr>
<tr>
<td>Mutual funds - real estate</td>
<td>—</td>
<td>3.6</td>
<td>—</td>
<td>3.6</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>99.1</td>
<td>—</td>
<td>99.1</td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>1.7</td>
<td>—</td>
<td>—</td>
<td>1.7</td>
</tr>
<tr>
<td>Total</td>
<td>$ 1.7</td>
<td>$ 186.9</td>
<td>$ —</td>
<td>$ 188.6</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 held in trust or similar entities include investments in publicly traded mutual funds and are typically valued using the net asset value 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 significant changes in valuation techniques during fiscal years 2015 and 2014.

Estimated Contributions and Future Benefit Payments
The Company made contributions of $6.9 million to the defined benefit pension plans during fiscal year 2015, compared to $7.2 million in fiscal year 2014. The Company expects total contributions to the defined benefit pension plans for fiscal year 2016 will be approximately $7.6 million.

Estimated future benefit payments to the defined benefit pension plans at October 2, 2015 were as follows:

<table>
<thead>
<tr>
<th>Fiscal Years</th>
<th>Total (In millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>$6.7</td>
</tr>
<tr>
<td>2017</td>
<td>8.9</td>
</tr>
<tr>
<td>2018</td>
<td>8.5</td>
</tr>
<tr>
<td>2019</td>
<td>9.0</td>
</tr>
<tr>
<td>2020</td>
<td>5.6</td>
</tr>
<tr>
<td>Thereafter</td>
<td>43.1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$81.8</strong></td>
</tr>
</tbody>
</table>

11. STOCKHOLDERS’ EQUITY
Share Repurchase Program
During fiscal years 2015, 2014 and 2013, the Company repurchased 4,824,849 shares, 7,750,000 shares and 6,000,000 shares, respectively, of VMS common stock under various authorizations by VMS’s Board of Directors. The aggregate amount of these repurchases under the various accelerated share repurchase agreements and for shares repurchased in the open market totaled $422.0 million, $624.0 million and $423.7 million in fiscal years 2015, 2014 and 2013, respectively.

The repurchased shares included shares of VMS common stock repurchased under various accelerated share repurchase agreements. All shares that were repurchased under the Company's share repurchase programs have been retired.

In August 2014, the VMS Board of Directors authorized the repurchase of 6,000,000 shares of VMS common stock from August 15, 2014 through December 31, 2015. As of October 2, 2015, 1,425,151 shares of VMS common stock remained available for repurchase under the August 2014 authorization.

The shares repurchased in fiscal year 2015 included repurchases under the following accelerated share repurchase agreements:

On January 6, 2015, the Company paid $45.0 million and J.P Morgan delivered 419,874 shares of VMS common stock. The repurchase period ended on March 27, 2015, and the Company received an additional 74,975 shares of VMS common stock from J.P. Morgan upon settlement.

On April 7, 2015, the Company paid $70.0 million and BofA delivered 592,280 shares of VMS common stock. The repurchase period ended on April 29, 2015, and the Company received an additional 151,604 shares of VMS common stock from BofA upon settlement.

On July 8, 2015, the Company paid $45.0 million to J.P. Morgan and J.P. Morgan delivered 418,167 shares of VMS common stock. The repurchase period ended on August 20, 2015, and the Company received an additional 102,933 shares from J.P Morgan upon settlement.
On July 23, 2015, the Company paid $43.9 million and received 400,000 shares of VMS common stock. The repurchase period ended on August 20, 2015, and the Company received an additional 105,091 shares from J.P. Morgan.

In November 2015, the VMS Board of Directors authorized the repurchase of an additional 8,000,000 shares of VMS common stock through December 31, 2016. Share repurchases under the Company's authorizations may 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 in one or more blocks. Shares will be retired upon repurchase.

**Accumulated Other Comprehensive Loss**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at September 28, 2012</td>
<td>$48,623</td>
<td>$531</td>
<td>$8,529</td>
<td>$56,621</td>
<td></td>
</tr>
<tr>
<td>Other comprehensive earnings before reclassifications</td>
<td>7,545</td>
<td>509</td>
<td>9,230</td>
<td>17,284</td>
<td></td>
</tr>
<tr>
<td>Amounts reclassified out of other comprehensive earnings</td>
<td>2,950</td>
<td>(2,463)</td>
<td>—</td>
<td>487</td>
<td></td>
</tr>
<tr>
<td>Tax benefit (expense)</td>
<td>(1,953)</td>
<td>732</td>
<td>—</td>
<td>(1,221)</td>
<td></td>
</tr>
<tr>
<td>Balance at September 27, 2013</td>
<td>(40,081)</td>
<td>(691)</td>
<td>701</td>
<td>(40,071)</td>
<td></td>
</tr>
<tr>
<td>Other comprehensive earnings before reclassifications</td>
<td>(5,429)</td>
<td>3,925</td>
<td>(16,217)</td>
<td>(17,721)</td>
<td></td>
</tr>
<tr>
<td>Amounts reclassified out of other comprehensive earnings</td>
<td>2,316</td>
<td>(1,281)</td>
<td>—</td>
<td>1,035</td>
<td></td>
</tr>
<tr>
<td>Tax benefit (expense)</td>
<td>(866)</td>
<td>(988)</td>
<td>—</td>
<td>(1,854)</td>
<td></td>
</tr>
<tr>
<td>Balance at September 26, 2014</td>
<td>(44,060)</td>
<td>965</td>
<td>(15,516)</td>
<td>(58,611)</td>
<td></td>
</tr>
<tr>
<td>Other comprehensive earnings before reclassifications</td>
<td>(4,521)</td>
<td>2,239</td>
<td>(24,765)</td>
<td>(27,211)</td>
<td></td>
</tr>
<tr>
<td>Amounts reclassified out of other comprehensive earnings</td>
<td>2,099</td>
<td>(3,780)</td>
<td>—</td>
<td>(1,681)</td>
<td></td>
</tr>
<tr>
<td>Tax benefit (expense)</td>
<td>412</td>
<td>576</td>
<td>52</td>
<td>1,040</td>
<td></td>
</tr>
<tr>
<td>Balance at October 2, 2015</td>
<td>$46,070</td>
<td>—</td>
<td>$112</td>
<td>$86,463</td>
<td></td>
</tr>
</tbody>
</table>

The amounts reclassified out of other comprehensive earnings into the Consolidated Statements of Earnings, with line item location, during each period were as follows (in thousands):

<table>
<thead>
<tr>
<th>Comprehensive Earnings Components</th>
<th>Fiscal Years</th>
<th>Line Item in Statements of Earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unrealized gains and (losses) on defined benefit pension and post-retirement benefit plans</td>
<td>$2,099</td>
<td>$2,316</td>
</tr>
<tr>
<td>Unrealized gains and (losses) on cash flow hedging instruments</td>
<td>3,780</td>
<td>1,281</td>
</tr>
<tr>
<td>Total amounts reclassified out of other comprehensive earnings</td>
<td>$1,681</td>
<td>$1,035</td>
</tr>
</tbody>
</table>
12. EMPLOYEE STOCK PLANS

Employee Stock Plans

In February 2005, VMS’s stockholders approved the 2005 Omnibus Stock Plan (the “2005 Plan”), which was last amended and restated in February 2012. The 2005 Plan, as amended and restated to date, is referred to as (the “Third Amended 2005 Plan”). The Third 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 Third Amended 2005 Plan also provides for the grant of the option component of the shares purchased under the Employee Stock Purchase Plan (which is described further below) in connection with certain transactions.

Stock options granted under the Third Amended 2005 Plan 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 Third 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 Third 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 Third 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 Third 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 three years from the date of grant. For awards of restricted stock and restricted stock units prior to fiscal year 2010, any unvested awards are generally forfeited at the time of termination. However, restricted stock units granted in fiscal year 2010 and thereafter that are unvested at death become fully vested and unvested restricted stock units will generally continue to vest in accordance with the original vesting schedule if the employee remains 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 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.

In fiscal years 2015, 2014 and 2013, the Company granted performance units to certain employees under the Third Amended 2005 Plan. The number of shares of VMS common stock ultimately issued under the performance units at vesting depend on the Company’s business performance during the performance period, against specified performance targets, both of which are set by the Compensation and Management Development Committee of the Board of Directors at the beginning of the period. The performance units vest at the end of a three -year service period with one three -year performance period for both the Company's and total shareholder return performance grants prior to fiscal year 2015 and a one year Company's performance period and a three year total shareholder return performance period for grants made in fiscal year 2015. Subject to certain exceptions, any unvested performance unit awards are forfeited at the time of termination. Also, similar to the adjustments discussed above for restricted stock unit awards, the number of performance units that ultimately vest is adjusted in the case of retirement.

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) were estimated at the date of grant using the Black-Scholes model with the following weighted average assumptions:
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 used a combination of historical and implied volatility of its traded options, or blended volatility, in deriving the expected volatility assumption. 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, based on historical experience. Forfeitures are estimated at the time of grant and revised, in subsequent periods if actual forfeitures differ from those estimates.

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

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of revenues - Product</td>
<td>$4,753</td>
<td>$3,323</td>
<td>$4,088</td>
</tr>
<tr>
<td>Cost of revenues - Service</td>
<td>4,068</td>
<td>4,658</td>
<td>3,460</td>
</tr>
<tr>
<td>Research and development</td>
<td>6,805</td>
<td>6,194</td>
<td>5,993</td>
</tr>
<tr>
<td>Selling, general and administrative</td>
<td>30,677</td>
<td>25,461</td>
<td>29,096</td>
</tr>
<tr>
<td>Total share-based compensation expense</td>
<td>$46,303</td>
<td>$39,636</td>
<td>$42,637</td>
</tr>
<tr>
<td>Income tax benefit for share-based compensation</td>
<td>$(14,198)</td>
<td>$(12,062)</td>
<td>$(12,989)</td>
</tr>
</tbody>
</table>

The table below summarizes the effect of recording pre-tax share-based compensation expense for equity incentive awards:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stock options</td>
<td>$11,301</td>
<td>$9,489</td>
<td>$10,577</td>
</tr>
<tr>
<td>Restricted stock units and restricted stock awards (1)</td>
<td>31,364</td>
<td>26,576</td>
<td>28,229</td>
</tr>
<tr>
<td>Employee stock purchase plan</td>
<td>3,638</td>
<td>3,571</td>
<td>3,831</td>
</tr>
<tr>
<td>Total share-based compensation expense</td>
<td>$46,303</td>
<td>$39,636</td>
<td>$42,637</td>
</tr>
</tbody>
</table>

(1) Restricted stock units and restricted stock awards include performance units and deferred stock units.
A summary of share-based awards available for grant is as follows:

<table>
<thead>
<tr>
<th>(In thousands)</th>
<th>Shares Available for Grant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at September 28, 2012</td>
<td>11,868</td>
</tr>
<tr>
<td>Granted</td>
<td>(2,045)</td>
</tr>
<tr>
<td>Canceled or expired</td>
<td>102</td>
</tr>
<tr>
<td>Balance at September 27, 2013</td>
<td>9,925</td>
</tr>
<tr>
<td>Granted</td>
<td>(1,934)</td>
</tr>
<tr>
<td>Canceled or expired</td>
<td>177</td>
</tr>
<tr>
<td>Balance at September 26, 2014</td>
<td>8,168</td>
</tr>
<tr>
<td>Granted</td>
<td>(1,838)</td>
</tr>
<tr>
<td>Canceled or expired</td>
<td>331</td>
</tr>
<tr>
<td>Balance at October 2, 2015</td>
<td>6,661</td>
</tr>
</tbody>
</table>

For purposes of the total number of shares available for grant under the Third Amended 2005 Plan, any shares subject to awards of stock options are counted against the available-for-grant limit as one share for every one share subject to the award. Awards other than stock options are counted against the available-for-grant limit as 2.5 shares for every one share awarded before February 9, 2012 and as 2.6 shares for every one share awarded on or after February 9, 2012. The shares available for grant limit is further adjusted to reflect a maximum payout of 2.0 shares that could be issued for each performance unit granted beginning in fiscal year 2015 and a maximum payout of 1.5 shares that could be issued for each performance unit granted prior to fiscal year 2015. All awards may be subject to restrictions on transferability and continued employment as determined by the Compensation and Management Development Committee.

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

<table>
<thead>
<tr>
<th>(In thousands, except per share amounts)</th>
<th>Options Outstanding</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of Shares</td>
</tr>
<tr>
<td>Balance at September 28, 2012</td>
<td>6,459</td>
</tr>
<tr>
<td>Granted</td>
<td>613</td>
</tr>
<tr>
<td>Canceled, expired or forfeited</td>
<td>(20)</td>
</tr>
<tr>
<td>Exercised</td>
<td>(2,567)</td>
</tr>
<tr>
<td>Balance at September 27, 2013</td>
<td>4,485</td>
</tr>
<tr>
<td>Granted</td>
<td>625</td>
</tr>
<tr>
<td>Canceled, expired or forfeited</td>
<td>(46)</td>
</tr>
<tr>
<td>Exercised</td>
<td>(1,721)</td>
</tr>
<tr>
<td>Balance at September 26, 2014 (2,486 options exercisable at a weighted average exercise price of $54.21)</td>
<td>3,343</td>
</tr>
<tr>
<td>Granted</td>
<td>634</td>
</tr>
<tr>
<td>Canceled, expired or forfeited</td>
<td>(26)</td>
</tr>
<tr>
<td>Exercised</td>
<td>(1,414)</td>
</tr>
<tr>
<td>Balance at October 2, 2015</td>
<td>2,537</td>
</tr>
</tbody>
</table>

The total pre-tax intrinsic value of stock options exercised was $51.1 million, $54.4 million and $66.3 million in fiscal years 2015, 2014 and 2013, respectively.
The following table summarizes information related to stock options outstanding and exercisable under the Company’s employee stock plans at October 2, 2015:

<table>
<thead>
<tr>
<th>Range of Exercise Prices</th>
<th>Options Outstanding</th>
<th>Options Exercisable</th>
</tr>
</thead>
<tbody>
<tr>
<td>(In thousands, except years and per-share amounts)</td>
<td>Number of Shares</td>
<td>Weighted Average Remaining Contractual Term (in years)</td>
</tr>
<tr>
<td>$37.06 – $39.85</td>
<td>31</td>
<td>0.4</td>
</tr>
<tr>
<td>$45.22 – $52.07</td>
<td>379</td>
<td>1.0</td>
</tr>
<tr>
<td>$52.61 – $72.26</td>
<td>908</td>
<td>3.1</td>
</tr>
<tr>
<td>$74.28 – $92.65</td>
<td>1,219</td>
<td>5.9</td>
</tr>
<tr>
<td>Total</td>
<td>2,537</td>
<td>4.1</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 $75.19 as of October 2, 2015, the last trading date of fiscal year 2015, and which represents the 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.

As of October 2, 2015, there was $10.6 million of total unrecognized compensation expense related to stock options granted under the Company’s employee stock plans. This unrecognized compensation expense is expected to be recognized over a weighted average period of 1.6 years.

The activity for restricted stock, restricted stock units, deferred stock units and performance units is summarized as follows:

<table>
<thead>
<tr>
<th>(In thousands, except per share amounts)</th>
<th>Number of Shares</th>
<th>Weighted Average Grant-Date Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at September 28, 2012</td>
<td>945</td>
<td>$57.30</td>
</tr>
<tr>
<td>Granted</td>
<td>516</td>
<td>70.37</td>
</tr>
<tr>
<td>Vested</td>
<td>(396)</td>
<td>55.67</td>
</tr>
<tr>
<td>Canceled or expired</td>
<td>(30)</td>
<td>61.82</td>
</tr>
<tr>
<td>Balance at September 27, 2013</td>
<td>1,035</td>
<td>64.36</td>
</tr>
<tr>
<td>Granted</td>
<td>470</td>
<td>82.51</td>
</tr>
<tr>
<td>Vested</td>
<td>(335)</td>
<td>63.70</td>
</tr>
<tr>
<td>Canceled or expired</td>
<td>(44)</td>
<td>70.69</td>
</tr>
<tr>
<td>Balance at September 26, 2014</td>
<td>1,126</td>
<td>72.08</td>
</tr>
<tr>
<td>Granted</td>
<td>410</td>
<td>93.01</td>
</tr>
<tr>
<td>Vested</td>
<td>(500)</td>
<td>67.93</td>
</tr>
<tr>
<td>Canceled or expired</td>
<td>(86)</td>
<td>68.51</td>
</tr>
<tr>
<td>Balance at October 2, 2015</td>
<td>950</td>
<td>$84.11</td>
</tr>
</tbody>
</table>

As of October 2, 2015, unrecognized compensation expense totaling $34.1 million was related to restricted stock, restricted stock units, deferred stock units and performance units granted under the Company’s employee stock plans. This unrecognized share-based compensation expense is expected to be recognized over a weighted average period of 1.7 years. The shares that vested in fiscal year 2015 represented deferred stock units, restricted stock units and restricted common stock, and the total fair value of these shares upon vesting was $44.5 million. The Company withheld 183,458 shares with a fair value of $16.3 million for employees’ minimum withholding taxes at vesting of such awards in fiscal year 2015.

**Employee Stock Purchase Plan**

In February 2010, VMS’s stockholders approved the 2010 Employee Stock Purchase Plan (the “2010 ESPP”). The 2010 ESPP provides eligible employees with an opportunity to purchase shares of VMS common stock at 85% of the lower of its fair market value.
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.

VMS issued 237,657 shares for $16.3 million in fiscal year 2015 and 261,230 shares for $15.3 million in fiscal year 2014. At October 2, 2015, 5.9 million shares were available for issuance under the 2010 ESPP.

13. EARNINGS PER SHARE

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

<table>
<thead>
<tr>
<th>(In thousands, except per share amounts)</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net earnings attributable to Varian</td>
<td>$411,485</td>
<td>$403,703</td>
<td>$438,248</td>
</tr>
<tr>
<td>Weighted average shares outstanding - basic</td>
<td>99,679</td>
<td>103,964</td>
<td>108,352</td>
</tr>
<tr>
<td>Dilutive effect of potential common shares</td>
<td>873</td>
<td>1,307</td>
<td>1,701</td>
</tr>
<tr>
<td>Weighted average shares outstanding - diluted</td>
<td>100,552</td>
<td>105,271</td>
<td>110,053</td>
</tr>
<tr>
<td>Net earnings per share attributable to Varian - basic</td>
<td>$4.13</td>
<td>$3.88</td>
<td>$4.04</td>
</tr>
<tr>
<td>Net earnings per share attributable to Varian - diluted</td>
<td>$4.09</td>
<td>$3.83</td>
<td>$3.98</td>
</tr>
<tr>
<td>Anti-dilutive employee shared based awards, excluded</td>
<td>987</td>
<td>632</td>
<td>707</td>
</tr>
</tbody>
</table>

14. TAXES ON EARNINGS

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

Taxes on earnings were as follows:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current provision:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal</td>
<td>$52.8</td>
<td>$86.6</td>
<td>$110.1</td>
</tr>
<tr>
<td>State and local</td>
<td>8.4</td>
<td>6.1</td>
<td>13.4</td>
</tr>
<tr>
<td>Foreign</td>
<td>76.0</td>
<td>62.2</td>
<td>54.3</td>
</tr>
<tr>
<td>Total current</td>
<td>137.2</td>
<td>154.9</td>
<td>177.8</td>
</tr>
<tr>
<td>Deferred provision (benefit):</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federal</td>
<td>2.5</td>
<td>5.0</td>
<td>(3.9)</td>
</tr>
<tr>
<td>State and local</td>
<td>(0.6)</td>
<td>(0.1)</td>
<td>(0.2)</td>
</tr>
<tr>
<td>Foreign</td>
<td>3.5</td>
<td>11.0</td>
<td>0.1</td>
</tr>
<tr>
<td>Total deferred</td>
<td>5.4</td>
<td>15.9</td>
<td>(4.0)</td>
</tr>
<tr>
<td>Taxes on earnings</td>
<td>$142.6</td>
<td>$170.8</td>
<td>$173.8</td>
</tr>
</tbody>
</table>

Earnings before taxes are generated from the following geographic areas:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>$223.9</td>
<td>$173.9</td>
<td>$308.0</td>
</tr>
<tr>
<td>Foreign</td>
<td>330.8</td>
<td>400.6</td>
<td>304.1</td>
</tr>
<tr>
<td>Total earnings before taxes</td>
<td>$554.7</td>
<td>$574.5</td>
<td>$612.1</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>Fiscal Years</th>
<th>2015</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal statutory income tax rate</td>
<td>35.0 %</td>
<td>35.0 %</td>
<td>35.0 %</td>
</tr>
<tr>
<td>State and local taxes, net of federal tax benefit</td>
<td>0.8 %</td>
<td>0.8 %</td>
<td>1.3 %</td>
</tr>
<tr>
<td>Non-U.S. income taxed at different rates, net</td>
<td>(9.2)%</td>
<td>(5.2)%</td>
<td>(5.6)%</td>
</tr>
<tr>
<td>Other</td>
<td>(0.9)%</td>
<td>(0.9)%</td>
<td>(2.3)%</td>
</tr>
<tr>
<td>Effective tax rate</td>
<td>25.7 %</td>
<td>29.7 %</td>
<td>28.4 %</td>
</tr>
</tbody>
</table>

During fiscal years 2015, 2014 and 2013, 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.

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

<table>
<thead>
<tr>
<th></th>
<th>October 2, 2015</th>
<th>September 26, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred Tax Assets:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deferred revenues</td>
<td>$ 28.2</td>
<td>$ 26.9</td>
</tr>
<tr>
<td>Deferred compensation</td>
<td>33.5</td>
<td>37.3</td>
</tr>
<tr>
<td>Product warranty</td>
<td>10.5</td>
<td>10.9</td>
</tr>
<tr>
<td>Inventory adjustments</td>
<td>20.9</td>
<td>19.7</td>
</tr>
<tr>
<td>Equity-based compensation</td>
<td>22.8</td>
<td>28.8</td>
</tr>
<tr>
<td>Environmental reserve</td>
<td>4.3</td>
<td>4.8</td>
</tr>
<tr>
<td>Accruals and reserves</td>
<td>14.3</td>
<td>14.3</td>
</tr>
<tr>
<td>Net operating loss carryforwards</td>
<td>92.6</td>
<td>79.1</td>
</tr>
<tr>
<td>Other</td>
<td>31.7</td>
<td>38.2</td>
</tr>
<tr>
<td>Total deferred tax assets</td>
<td>258.8</td>
<td>260.0</td>
</tr>
<tr>
<td>Valuation allowance</td>
<td>(69.7)</td>
<td>(67.5)</td>
</tr>
<tr>
<td>Net deferred tax assets</td>
<td>$ 189.1</td>
<td>$ 192.5</td>
</tr>
</tbody>
</table>

Deferred Tax Liabilities:

<table>
<thead>
<tr>
<th></th>
<th>October 2, 2015</th>
<th>September 26, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax-deductible goodwill</td>
<td>(23.3)</td>
<td>(27.7)</td>
</tr>
<tr>
<td>Fixed assets</td>
<td>(15.5)</td>
<td>(16.3)</td>
</tr>
<tr>
<td>Unremitted earnings of foreign subsidiaries</td>
<td>(27.9)</td>
<td>(24.0)</td>
</tr>
<tr>
<td>Other</td>
<td>(34.8)</td>
<td>(29.3)</td>
</tr>
<tr>
<td>Total deferred tax liabilities</td>
<td>(101.5)</td>
<td>(97.3)</td>
</tr>
<tr>
<td>Net deferred tax assets</td>
<td>$ 87.6</td>
<td>$ 95.2</td>
</tr>
</tbody>
</table>

Reported As:

<table>
<thead>
<tr>
<th></th>
<th>October 2, 2015</th>
<th>September 26, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net current deferred tax assets</td>
<td>$ 132.1</td>
<td>$ 126.0</td>
</tr>
<tr>
<td>Net long-term deferred tax assets (included in other assets)</td>
<td>9.4</td>
<td>11.5</td>
</tr>
<tr>
<td>Net current deferred tax liabilities (included in accrued liabilities)</td>
<td>6.4</td>
<td>10.8</td>
</tr>
<tr>
<td>Net long-term deferred tax liabilities (included in other long-term liabilities)</td>
<td>47.5</td>
<td>(31.5)</td>
</tr>
<tr>
<td>Net deferred tax assets</td>
<td>$ 87.6</td>
<td>$ 95.2</td>
</tr>
</tbody>
</table>

The Company has not provided for U.S. federal income and foreign withholding taxes on $1,635.0 million of cumulative undistributed earnings of non-U.S. subsidiaries as of October 2, 2015. 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, an additional deferred taxes liability of approximately $421.3 million would be provided.

The Company has federal net operating loss carryforwards of approximately $12.1 million expiring between 2018 and 2031. The federal net operating loss carryforwards are subject to an annual limitation of approximately $1.3 million per year. The
Company has state net operating loss carryforwards of $10.9 million expiring between 2018 and 2032. The Company has foreign net operating loss carryforwards of $268.4 million with an indefinite life. Of this amount, $20.1 million is unavailable to the Company under local loss utilization rules.

The valuation allowance relates primarily to net operating losses in certain foreign jurisdictions where, based on the weight of available evidence, it is more likely than not that the tax benefit of the net operating losses will not be realized. The valuation allowance increased by $2.2 million during fiscal year 2015, increased by $6.8 million during fiscal year 2014, and increased by $14.9 million in fiscal year 2013.

Income taxes paid were as follows:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Fiscal Years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Federal income taxes paid, net</td>
<td>$57.1</td>
</tr>
<tr>
<td>State, income taxes paid, net</td>
<td>7.2</td>
</tr>
<tr>
<td>Foreign income taxes paid, net</td>
<td>55.5</td>
</tr>
<tr>
<td>Total income taxes paid, net</td>
<td>$119.8</td>
</tr>
</tbody>
</table>

The Company accounts for uncertainty in income taxes following a two-step approach for 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>Fiscal Years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td>Unrecognized tax benefits balance–beginning of fiscal year</td>
<td>$49.6</td>
</tr>
<tr>
<td>Additions based on tax positions related to a prior year</td>
<td>—</td>
</tr>
<tr>
<td>Reductions based on tax positions related to a prior year</td>
<td>(9.9)</td>
</tr>
<tr>
<td>Additions based on tax positions related to the current year</td>
<td>5.7</td>
</tr>
<tr>
<td>Settlements</td>
<td>—</td>
</tr>
<tr>
<td>Reductions resulting from the expiration of the applicable statute of limitations</td>
<td>(5.9)</td>
</tr>
<tr>
<td>Unrecognized tax benefits balance–end of fiscal year</td>
<td>$39.5</td>
</tr>
</tbody>
</table>

As of October 2, 2015, the total amount of gross unrecognized tax benefits was $39.5 million. Of this amount, $31.2 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 October 2, 2015, the Company had accrued $7.1 million for the payment of interest and penalties related to unrecognized tax benefits. During fiscal year 2015, a net benefit of $0.5 million related to interest and penalties was included in taxes on earnings. As of September 26, 2014, the Company had accrued $7.8 million for the payment of interest and penalties related to unrecognized tax benefits. During fiscal year 2014, a net benefit of $1.1 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 2012. 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 2011. For U.S. states and other foreign tax returns, the Company is generally no longer subject to tax examinations for years prior to 2007.
15. BUSINESS COMBINATIONS

Business Combinations in Fiscal Year 2015

In September 2015, the Company purchased certain assets comprising a business from a sole proprietor for treatment planning software tools that will enhance both planning efficiency and treatment plan quality and allow oncologists to quickly adjust their intended dose distributions ahead of the treatment planning process. Through the acquisition, the Company also entered into a consulting agreement with the sole proprietor. The acquired assets were integrated into the Company's Oncology Systems reporting unit. The Company paid a total of $27.0 million for all of the assets in cash. The following table summarizes the purchase price allocation:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finite-lived intangible assets with a weighted average useful life of 8.3 years</td>
<td>$8.3</td>
</tr>
<tr>
<td>Indefinite-lived intangible assets — IPR&amp;D</td>
<td>8.8</td>
</tr>
<tr>
<td>Goodwill</td>
<td>9.9</td>
</tr>
<tr>
<td>Net assets acquired</td>
<td>$27.0</td>
</tr>
</tbody>
</table>

Claymount

In August 2015, the Company acquired Claymount Investments B.V. (“Claymount”), a Netherlands-based supplier of components and subsystems for X-ray imaging equipment manufacturers. The Company integrated Claymount into its X-ray imaging tubes and flat panel products reporting unit to enhance its ability to support a continuing industry-wide transition from analog to digital X-ray imaging. Total purchase price of the acquisition of $58.0 million was paid in cash. The following table summarizes the purchase price allocation:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net tangible assets (1)</td>
<td>$11.3</td>
</tr>
<tr>
<td>Finite-lived intangible assets with a weighted average useful life of 6.0 years</td>
<td>16.2</td>
</tr>
<tr>
<td>Goodwill</td>
<td>30.5</td>
</tr>
<tr>
<td>Net assets acquired</td>
<td>$58.0</td>
</tr>
</tbody>
</table>

(1) Includes $1.9 million in cash and cash equivalents.

MeVis

In April 2015, the Company completed the acquisition of 73.5% of the then outstanding shares of MeVis, a public company based in Bremen, Germany that provides image processing software and services for cancer screening, using $25.5 million in cash. The acquisition of MeVis was integrated into the Company's X-ray tubes and flat panel products reporting unit. The following table summarizes the purchase price allocation:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net tangible assets (1)</td>
<td>$21.7</td>
</tr>
<tr>
<td>Finite-lived intangible assets with a weighted average useful life of 5.4 years</td>
<td>5.8</td>
</tr>
<tr>
<td>Goodwill</td>
<td>8.2</td>
</tr>
<tr>
<td>Fair value of net assets</td>
<td>35.7</td>
</tr>
<tr>
<td>Less: Noncontrolling interests (2)</td>
<td>10.2</td>
</tr>
<tr>
<td>Net assets acquired</td>
<td>$25.5</td>
</tr>
</tbody>
</table>

(1) Includes $13.9 million cash and cash equivalents.
(2) Fair value was determined using the market price of the shares of MeVis as of the acquisition date.

In August 2015, the Company, through one of its German subsidiaries, entered into a domination and profit and loss transfer agreement (the “DPLTA”) with MeVis. Subsequent to fiscal year 2015, in October 2015, the DPLTA became effective upon its registration at the local court of Bremen, Germany. Under the DPLTA, MeVis subordinates its management to the Company and undertakes to transfer all of its annual profits and losses to the Company. In return, the DPLTA grants the noncontrolling
shareholders of MeVis: (1) an annual recurring net compensation of €0.95 per MeVis share starting from January 1, 2015 and (2) a put right for their MeVis shares at €19.77 per MeVis share. As of October 2, 2015, noncontrolling shareholders together held approximately 482,000 shares of MeVis, representing 26.5% of the outstanding shares.

**Business Combinations in Fiscal Year 2014**

**Transpire**

In July 2014, the Company closed the acquisition of certain assets and liabilities of Transpire, Inc. (“Transpire”), a privately-held developer of software solutions for accurately and rapidly predicting the macroscopic behavior of radiation. The Company’s Oncology Systems reporting unit integrated Transpire’s dose calculation software to improve its image guidance tools and deliver high-precision radiotherapy for the treatment of cancer. The Company’s Security and inspection products reporting unit is using certain other Transpire software to provide comprehensive solutions for customers that integrate the Company’s high-energy X-ray technology into systems for cargo screening, industrial inspection and non-destructive testing. The acquisition was accounted for as a business combination. Total purchase price of the acquisition of $19.3 million consisted of $16.0 million in cash and $3.3 million of earn-out consideration measured at fair value. The following table summarizes the purchase price allocation:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net assumed liabilities</td>
<td>$ (0.1)</td>
</tr>
<tr>
<td>Finite-lived intangible assets with a weighted average useful life of 6.1 years (1)</td>
<td>8.7</td>
</tr>
<tr>
<td>Indefinite-lived intangible assets — IPR&amp;D</td>
<td>2.0</td>
</tr>
<tr>
<td>Goodwill</td>
<td>8.7</td>
</tr>
<tr>
<td><strong>Net assets acquired</strong></td>
<td><strong>$ 19.3</strong></td>
</tr>
</tbody>
</table>

(1) $6.0 million was allocated to the Company’s Oncology Systems reporting unit and $2.7 million to the Company’s Security and inspection products reporting unit.

(2) $5.9 million was allocated to the Company's Oncology Systems reporting unit and $2.8 million to the Company's Security and inspection products reporting unit.

**Velocity**

In April 2014, the Company closed the acquisition of certain assets of Velocity Medical Solutions LLC (“Velocity”), a privately-held Atlanta-based developer of specialized software for cancer clinics. The Velocity software aggregates unstructured treatment and imaging data from diverse systems to give a more comprehensive view of a patient's diagnostic imaging and treatment history and help clinicians make more informed treatment decisions. The acquired assets of Velocity were integrated into the Company’s Oncology Systems reporting unit. The total purchase price of the acquisition of $19.9 million consisted of $17.0 million in cash (of which $2.6 million was held back) and $2.9 million of earn-out consideration measured at fair value. The following table summarizes the purchase price allocation:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net assumed liabilities</td>
<td>$ (0.5)</td>
</tr>
<tr>
<td>Finite-lived intangible assets with a weighted average useful life of 6.1 years</td>
<td>10.6</td>
</tr>
<tr>
<td>Goodwill</td>
<td>9.8</td>
</tr>
<tr>
<td><strong>Net assets acquired</strong></td>
<td><strong>$ 19.9</strong></td>
</tr>
</tbody>
</table>

**Other information**

All acquisitions listed above were accounted for as business combinations. Total transaction costs related to the Company’s acquisitions incurred during fiscal years 2015 and 2014 were $3.3 million and $0.7 million, respectively. These transaction costs were expensed as incurred in selling, general and administrative expenses in the Consolidated Statements of Earnings.

The Company’s purchase price allocation for acquisitions completed during fiscal year 2015 are preliminary and subject to revision as additional information about fair value of assets and liabilities becomes available. Additional information, which existed as of the acquisition date but at that time was unknown to the Company, may become known to the Company during the
The goodwill generated from the Company’s acquisitions completed is primarily attributable to expected synergies. The goodwill is deductible for income tax purposes for all acquisitions except MeVis and Claymount. The Consolidated Financial Statements include the operating results of each acquisition from the date of acquisition. Pro forma results of operations for the acquisitions completed during the fiscal years presented have not been presented because the effects of the acquisitions, individually and in the aggregate, were not material to the Company’s financial results.

16. VPT LOANS

The following table lists the Company's outstanding loans and commitments for funding development and construction of various proton therapy centers:

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>October 2, 2015</th>
<th>September 26, 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Balance</td>
<td>Commitment</td>
</tr>
<tr>
<td><strong>Long-term notes receivable</strong>:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NYPC loan</td>
<td>$18.7</td>
<td>$72.8</td>
</tr>
<tr>
<td>MPTC loan</td>
<td>12.2</td>
<td>22.8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$30.9</td>
<td>$95.6</td>
</tr>
<tr>
<td><strong>Available-for-sale Securities</strong>:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CPTC loans</td>
<td>$83.9</td>
<td>—</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$83.9</td>
<td>—</td>
</tr>
</tbody>
</table>

(1) Included in other assets on the Company's Consolidated Balance Sheets.

**NYPc Loan**

In July 2015, the Company, through one of its subsidiaries, committed to loan up to $91.5 million to MM Proton I, LLC in connection with a purchase agreement to supply a proton system to equip the NYPC. The commitment includes a $73.0 million “Senior First Lien Loan” with a six-year term at 9% interest and an $18.5 million “Subordinate Loan” with a six-and-a-half-year term at up to 13.5% interest. The Company's entire commitment of the Subordinate Loan was drawn down in fiscal year 2015. The Company expects the remaining draw downs of the Senior First Lien Loan to take place primarily through fiscal year 2018. Other lenders participating in the NYPC loans include J.P. Morgan and an affiliate of The Goldman Sachs Group, Inc. The Senior First Lien Loan is collateralized by all of the assets of the NYPC.

**MPTC Loan**

In May 2015, the Company, through one of its subsidiaries, committed to loan up to $35.0 million to MPTC, which included rolling over an existing loan for $10.0 million plus $2.2 million of previously accrued interest. The Company had previously entered into an agreement with MPTC to supply it with a proton system. Varian’s commitment is in the form of a subordinated loan that is due, with accrued interest, in three annual payments from 2020 to 2022. The Company's outstanding commitment under the loan to MPTC is to be paid in four installments of $5.7 million each on June 30, 2016, September 30, 2016, December 30, 2016 and March 31, 2017. The interest on the loan accrues at 12%.

As of October 2, 2015, the Company had recorded $28.6 million in accounts receivable from MPTC, which included unbilled accounts receivable.

**CPTC Loans**

In September 2011, ORIX and the Company, through its Swiss subsidiary, committed to loan up to $165.3 million (“Tranche A loan”) to CPTC to fund the development, construction and initial operations of the Scripps Proton Therapy Center in San Diego, California. 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 the Tranche A loan was $115.3 million. In June 2014, the Company, through its Swiss subsidiary, entered into a series of agreements, pursuant to which J.P. Morgan assumed $45.0 million of the Company’s original maximum commitment of $115.3 million, reducing the Company’s maximum commitment under the Tranche A loan to $70.3 million. Pursuant to these agreements, J.P. Morgan purchased $38.1 million of the Company’s outstanding Tranche A loan at par value. Through these agreements, the Company’s Swiss subsidiary
also increased its individual loan commitment by $10.0 million (“Tranche B loan”). The Tranche A and Tranche B loans are collectively, referred to as the “CPTC Loans.”

As of October 2, 2015, the Company had loaned $73.5 million under the Tranche A loan and $10.4 million under the Tranche B loan. As of September 26, 2014, the Company had loaned $66.2 million under the Tranche A loan and $9.4 million under the Tranche B loan. The amounts loaned under the Tranche A and Tranche B loans include accrued interest. ORIX has the option to purchase the Company's share of the CPTC loans at par. The CPTC loans meet the definition of a debt security and therefore are accounted for as available-for-sale securities and recorded at fair value for both fiscal year 2015 and 2014. During the fourth quarter of fiscal year 2015, the Company reclassified the Tranche A loan from short-term investment to other assets on the Company's Consolidated Balance Sheet as the Company did not expect to be repaid and did not intend to sell all or a portion of its Tranche A loan in the next fiscal year. The Tranche B loan was included in other assets on the Company's Consolidated Balance Sheet for both fiscal year 2015 and 2014. The Tranche B loan is subordinated to the Tranche A loan in the event of default, but otherwise has the same terms as the Tranche A loan. The CPTC Loans are collateralized by all of the assets of the Scripps Proton Therapy Center. The CPTC Loans mature in September 2017 and bear interest at the London Interbank Offer Rate (“LIBOR”) plus 7.00% per annum with a minimum interest rate of 9.00% per annum. Interest only payments on the CPTC Loans were due monthly in arrears until January 1, 2015, at which time monthly payments based on amortization of the principal balance over a 15-year period at the above mentioned interest rate become due and payable. To date no amortizing principal payments have been made. In November 2015, ORIX, J.P. Morgan and the Company (collectively the “Lenders”) and CPTC entered into a forbearance agreement whereby the lenders will not enforce their rights to principal and interest payments until April 2017, subject to CPTC maintaining certain covenants and achieving certain targets, with additional extensions through September 2017 based on hitting additional targets largely around patient volume and cash flow. In connection with the forbearance agreement the Lenders agreed to make available up to an additional $9.7 million of loan proceeds (based on their pro-rata share of the existing loan) with terms similar to the Tranche A loan for additional working capital needs; the Company's proportionate share of this commitment is $4.4 million and is expected to be drawn down during fiscal year 2016. There were no other significant changes to the loan agreements.

As of October 2, 2015 and September 26, 2014, the Company had recorded $25.2 million and $20.1 million in accounts receivable from CPTC, respectively, which included unbilled accounts receivable.

The Company has determined that MM Proton I, LLC, MPTC and CPTC are variable interest entities and that the Company holds a significant variable interest of each of the entities through its participation in the loan facilities and its agreements to supply and service the proton therapy equipment. The Company has concluded that it is not the primary beneficiary of any of these entities. The Company has no voting rights, has no approval authority or veto rights for these centers' budget, and does not have the power to direct patient recruitment, clinical operations and management of these Centers, which the Company believes are the matters that most significantly affect their economic performance. The Company’s exposure to loss as a result of its involvement with MM Proton I, LLC, MPTC and CPTC is limited to the carrying amounts of the above mentioned assets on its Consolidated Balance Sheets.

17. SEGMENT INFORMATION

The Company’s operations are grouped into two reportable operating segments: Oncology Systems and Imaging Components. The Company’s GTC and VPT business are reflected in the “Other” category because these operating segments do not meet the criteria of a reportable operating segment. The 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 CODM allocates resources to and evaluates the financial performance of each operating segment primarily based on operating earnings.

Description of Segments

The Oncology Systems segment designs, manufactures, sells and services hardware and software products for treating cancer with conventional radiation therapy, and advanced treatments such as fixed field intensity-modulated radiation therapy (“IMRT”), image-guided radiation therapy (“IGRT”), VMAT, stereotactic radiosurgery (“SRS”), stereotactic body radiotherapy (“SBRT”) and brachytherapy. 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 IMRT, IGRT, VMAT, SRS and SBRT, 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 Imaging Components segment designs, manufactures, sells and services X-ray imaging components for use in a range of applications, including radiographic or fluoroscopic imaging, mammography, special procedures, computed tomography, computer-aided diagnostics and industrial applications. The Company provides a broad range of X-ray imaging components including X-ray tubes, flat panel digital image detectors, high voltage connectors, image processing software and workstations, ionization chambers and automatic exposure control systems. The Company’s X-ray imaging components are sold to imaging system OEM customers that incorporate them into their medical diagnostic, dental, veterinary and industrial imaging systems, to independent service companies and directly to end-users for replacement purposes. The Imaging Components segment also designs, manufactures, sells and services security and inspection products, which include 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 Company generally sells security and inspection products to OEM customers who incorporate its products into their inspection systems.

The Company’s GTC and VPT business are reported together under the “Other” category.

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

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.

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**

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Revenues</th>
<th>Operating Earnings (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fiscal Years</td>
<td></td>
</tr>
<tr>
<td>Oncology Systems</td>
<td>$2,344.0</td>
<td>$2,344.2</td>
</tr>
<tr>
<td>Imaging Components</td>
<td>611.2</td>
<td>660.2</td>
</tr>
<tr>
<td>Total reportable segments</td>
<td>2,955.2</td>
<td>3,004.4</td>
</tr>
<tr>
<td>Other</td>
<td>143.9</td>
<td>45.4</td>
</tr>
<tr>
<td>Total Company</td>
<td>$3,099.1</td>
<td>$3,049.8</td>
</tr>
</tbody>
</table>

(1) Operating earnings of reportable segments and Other include an allocation of corporate expenses based on a percentage of their sales.

<table>
<thead>
<tr>
<th>(In millions)</th>
<th>Depreciation &amp; Amortization</th>
<th>Total Assets</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fiscal Years</td>
<td></td>
</tr>
<tr>
<td>Oncology Systems</td>
<td>$27.2</td>
<td>$24.8</td>
</tr>
<tr>
<td>Imaging Components</td>
<td>15.7</td>
<td>14.7</td>
</tr>
<tr>
<td>Total reportable segments</td>
<td>42.9</td>
<td>39.5</td>
</tr>
<tr>
<td>Other</td>
<td>4.9</td>
<td>1.0</td>
</tr>
<tr>
<td>Corporate</td>
<td>20.7</td>
<td>22.0</td>
</tr>
<tr>
<td>Total Company</td>
<td>$68.5</td>
<td>$62.5</td>
</tr>
</tbody>
</table>

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The reconciliation of segment operating earnings to the Company’s earnings before taxes was as follows:

<table>
<thead>
<tr>
<th>Segment</th>
<th>Fiscal Years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td><strong>Oncology Systems</strong></td>
<td>$485.4</td>
</tr>
<tr>
<td><strong>Imaging Components</strong></td>
<td>131.3</td>
</tr>
<tr>
<td><strong>Total reportable segments</strong></td>
<td>616.7</td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td>(31.2)</td>
</tr>
<tr>
<td><strong>Corporate</strong></td>
<td>(36.5)</td>
</tr>
<tr>
<td><strong>Interest income, net</strong></td>
<td>5.7</td>
</tr>
<tr>
<td><strong>Total earnings before taxes</strong></td>
<td>$554.7</td>
</tr>
</tbody>
</table>

**Geographic Information**

<table>
<thead>
<tr>
<th>Segment</th>
<th>Fiscal Years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015</td>
</tr>
<tr>
<td><strong>United States</strong></td>
<td>$1,418.3</td>
</tr>
<tr>
<td><strong>International</strong></td>
<td>1,680.8</td>
</tr>
<tr>
<td><strong>Total Company</strong></td>
<td>$3,099.1</td>
</tr>
</tbody>
</table>

The Company operates various manufacturing and marketing operations outside the United States. Allocation between domestic and foreign revenues is based on final destination of products sold. Japan represented approximately 11% and 13% of the Company’s total revenues in fiscal years 2015 and 2014, respectively. No single foreign country represented 10% or more of the Company’s total revenues in fiscal year in 2013. Intercompany and intracompany profits are eliminated in consolidation.

**18. QUARTERLY FINANCIAL DATA (UNAUDITED)**

<table>
<thead>
<tr>
<th>Fiscal Year 2015</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><strong>Total revenues</strong></td>
<td>$737.9</td>
<td>$759.4</td>
<td>$784.0</td>
<td>$817.8</td>
<td>$3,099.1</td>
</tr>
<tr>
<td><strong>Gross margin</strong></td>
<td>$327.0</td>
<td>$322.5</td>
<td>$315.0</td>
<td>$318.2</td>
<td>$1,282.7</td>
</tr>
<tr>
<td><strong>Net earnings attributable to Varian</strong></td>
<td>$93.3</td>
<td>$106.0</td>
<td>$113.5</td>
<td>$98.7</td>
<td>$411.5</td>
</tr>
<tr>
<td><strong>Net earnings per share – basic:</strong></td>
<td>$0.93</td>
<td>$1.06</td>
<td>$1.14</td>
<td>$1.00</td>
<td>$4.13</td>
</tr>
<tr>
<td><strong>Net earnings per share – diluted:</strong></td>
<td>$0.92</td>
<td>$1.05</td>
<td>$1.13</td>
<td>$0.99</td>
<td>$4.09</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fiscal Year 2014</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><strong>Total revenues</strong></td>
<td>$711.5</td>
<td>$778.5</td>
<td>$747.7</td>
<td>$812.1</td>
<td>$3,049.8</td>
</tr>
<tr>
<td><strong>Gross margin</strong></td>
<td>$309.6</td>
<td>$328.3</td>
<td>$323.7</td>
<td>$340.1</td>
<td>$1,301.7</td>
</tr>
<tr>
<td><strong>Net earnings attributable to Varian</strong></td>
<td>$98.0</td>
<td>$92.7</td>
<td>$101.7</td>
<td>$105.9</td>
<td>$403.7</td>
</tr>
<tr>
<td><strong>Net earnings per share – basic:</strong></td>
<td>$0.92</td>
<td>$0.89</td>
<td>$1.03</td>
<td>$1.04</td>
<td>$3.88</td>
</tr>
<tr>
<td><strong>Net earnings per share – diluted:</strong></td>
<td>$0.91</td>
<td>$0.88</td>
<td>$1.02</td>
<td>$1.02</td>
<td>$3.83</td>
</tr>
</tbody>
</table>

(1) In the second quarter of fiscal year 2014, net earnings attributable to Varian included a $25.1 million litigation charge related to a settlement agreement with the University of Pittsburgh.
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 October 2, 2015. In making this assessment, management used the criteria set forth in Internal Control-Integrated Framework (2013) 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 October 2, 2015. PricewaterhouseCoopers LLP has issued a report on the Company’s internal control over financial reporting as of October 2, 2015, 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 October 2, 2015 and September 26, 2014, and the results of their operations and their cash flows for each of the three years in the period ended October 2, 2015 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 October 2, 2015, based on criteria established in Internal Control - Integrated Framework (2013) 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/ PRICEWATERHOUSECOOPERS LLP

San Jose, California
November 25, 2015

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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” under Item 8, “Financial Statements and Supplementary Data” 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 of fiscal year 2015 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information
None.

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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 2016 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 2016 Annual Meeting of Stockholders under the caption “Stock Ownership—Section 16(a) Beneficial Ownership Reporting Compliance.”

Code of Conduct

We have adopted a Code of Conduct that applies to all of our executive officers and directors. The Code of Conduct is posted on our website. The Internet address for our website is http://www.varian.com, and the Code of Conduct 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 Conduct.”

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 Conduct 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 2016 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 October 2, 2015 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></td>
<td>Number of securities to be issued upon</td>
<td>Weighted average exercise price of</td>
<td>Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column A)</td>
</tr>
<tr>
<td></td>
<td>exercise of outstanding options, warrants and rights</td>
<td>outstanding options, warrants and rights (1)</td>
<td></td>
</tr>
<tr>
<td>Equity compensation plans approved by security holders</td>
<td>3,601,492 (2)</td>
<td>$72.58</td>
<td>12,523,392 (1)</td>
</tr>
<tr>
<td>Total</td>
<td>3,601,492</td>
<td>$72.58</td>
<td>12,523,392</td>
</tr>
</tbody>
</table>

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

(2) Consists of stock options, restricted stock units, deferred stock units and performance units granted under the Third Amended and Restated 2005 Omnibus Stock Plan (the “Third Amended 2005 Plan”). The shares available for grant limit is further adjusted to reflect a maximum payout of 2.0 shares that could be issued for each performance unit.
granted beginning in fiscal year 2015 and a maximum payout of 1.5 shares that could be issued for each performance unit granted prior to fiscal year 2015.

(3) Includes 5,862,010 shares available for future issuance under the 2010 Employee Stock Purchase Plan.

For a description of the material features of the Third Amended 2005 Plan, see Note 12, "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 2016 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 2016 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 2016 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 2016 Annual Meeting of Stockholders under the caption “Proposal Three—Ratification of the Appointment of Our Independent Registered Public Accounting Firm.”
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 Statements of Comprehensive Earnings
- Consolidated Balance Sheets
- Consolidated Statements of Cash Flows
- Consolidated Statements of Equity
- 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 2015, 2014 and 2013 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:

The exhibits listed in the accompanying index to exhibits are filed or incorporated by reference as part of this Form 10-K.
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 25, 2015

VARIAN MEDICAL SYSTEMS, INC.

By:

/s/ E LISHA W. F INNEY
Elisha W. Finney
Executive 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/ D OW R. WILSON</td>
<td>President and Chief Executive Officer and Director (Principal Executive Officer)</td>
<td>November 25, 2015</td>
</tr>
<tr>
<td>Dow R. Wilson</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ E LISHA W. F INNEY</td>
<td>Executive Vice President, Finance and Chief Financial Officer (Principal Financial Officer)</td>
<td>November 25, 2015</td>
</tr>
<tr>
<td>Elisha W. Finney</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ C LARENCE R. V ERHOEF</td>
<td>Senior Vice President, Finance and Corporate Controller (Principal Accounting Officer)</td>
<td>November 25, 2015</td>
</tr>
<tr>
<td>Clarence R. Verhoef</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ R. A NDREW ECKERT</td>
<td>Chairman of the Board</td>
<td>November 25, 2015</td>
</tr>
<tr>
<td>R. Andrew Eckert</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ T IMOTHY E. GUERTIN</td>
<td>Vice Chairman of the Board</td>
<td>November 25, 2015</td>
</tr>
<tr>
<td>Timothy E. Guertin</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ S USAN L. B OSTROM</td>
<td>Director</td>
<td>November 25, 2015</td>
</tr>
<tr>
<td>Susan L. Bostrom</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ R EGINA E. D UGAN</td>
<td>Director</td>
<td>November 25, 2015</td>
</tr>
<tr>
<td>Regina E. Dugan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ D AVID J. I LLINGWORTH</td>
<td>Director</td>
<td>November 25, 2015</td>
</tr>
<tr>
<td>David J. Illingworth</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ M ARK R. L. ARET</td>
<td>Director</td>
<td>November 25, 2015</td>
</tr>
<tr>
<td>Mark R. Laret</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ RUEDIGER N AUMANN-E T IENNE</td>
<td>Director</td>
<td>November 25, 2015</td>
</tr>
<tr>
<td>Ruediger Naumann-Etienne</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ E RICH R. R EINHARDT</td>
<td>Director</td>
<td>November 25, 2015</td>
</tr>
<tr>
<td>Erich R. Reinhardt</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ V ENKATRAMAN T HYAGARAJAN</td>
<td>Director</td>
<td>November 25, 2015</td>
</tr>
<tr>
<td>Venkatraman Thyagarajan</td>
<td></td>
<td></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>2015</td>
<td>Allowance for doubtful accounts receivable</td>
<td>$ 20,317</td>
<td>$ 1,123</td>
<td>$ (222)</td>
<td>$ 21,218</td>
</tr>
<tr>
<td>2014</td>
<td>Allowance for doubtful accounts receivable</td>
<td>$ 14,735</td>
<td>$ 7,150</td>
<td>$ (1,568)</td>
<td>$ 20,317</td>
</tr>
<tr>
<td>2013</td>
<td>Allowance for doubtful accounts receivable</td>
<td>$ 14,386</td>
<td>$ 5,984</td>
<td>$ (5,635)</td>
<td>$ 14,735</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Description</th>
<th>Balance at Beginning of Period</th>
<th>Increases</th>
<th>Deductions</th>
<th>Balance at End of Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>Valuation allowance for deferred tax assets</td>
<td>$ 67,468</td>
<td>$ 4,666</td>
<td>$ (2,450)</td>
<td>$ 69,684</td>
</tr>
<tr>
<td>2014</td>
<td>Valuation allowance for deferred tax assets</td>
<td>$ 60,704</td>
<td>$ 8,319</td>
<td>$ (1,555)</td>
<td>$ 67,468</td>
</tr>
<tr>
<td>2013</td>
<td>Valuation allowance for deferred tax assets</td>
<td>$ 45,751</td>
<td>$ 14,953</td>
<td>—</td>
<td>$ 60,704</td>
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</tbody>
</table>

128
<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 8-K Current Report filed as of August 18, 2014, File No. 1-7598).</td>
</tr>
<tr>
<td>3.2</td>
<td>Registrant’s By-Laws, as amended, effective August 18, 2014 (incorporated by reference to Exhibit No. 3.2 to the Registrant’s Form 8-K Current Report filed as of August 18, 2014, 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>Form of Registrant’s Indemnity Agreement with the directors and executive officers (incorporated by reference to Exhibit No. 10.1 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 2, 1999, File No. 1-7598).</td>
</tr>
<tr>
<td>10.2‡*</td>
<td>Form of Registrant’s Change in Control Agreement for Chief Executive Officer.</td>
</tr>
<tr>
<td>10.3‡*</td>
<td>Form of Registrant’s Change in Control Agreement for Senior Executives (Chief Financial Officer and General Counsel).</td>
</tr>
<tr>
<td>10.4‡*</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).</td>
</tr>
<tr>
<td>10.5‡*</td>
<td>Form of Registrant’s Change in Control Agreement for Key Employees.</td>
</tr>
<tr>
<td>10.6</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. 10.1 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended April 2, 1999, File No. 1-7598).</td>
</tr>
<tr>
<td>10.10‡</td>
<td>Registrant’s Frozen Deferred Compensation Plan (incorporated by reference to Exhibit No. 10.10 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>10.11‡</td>
<td>Registrant’s Amended and Restated 2005 Deferred Compensation Plan (incorporated by reference to Exhibit No. 10.11 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended January 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>10.12†*</td>
<td>Registrant’s Management Incentive Plan.</td>
</tr>
<tr>
<td>10.13†</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>10.15‡*</td>
<td>Description of Certain Compensatory Arrangements between the Registrant and its Executive Officers and Directors as of November 20, 2015.</td>
</tr>
<tr>
<td>10.16†</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>10.17†</td>
<td>Amendment No. 3 to the 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>10.18†</td>
<td>Form of Registrant’s Nonqualified Stock Option Agreement under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (effective for nonqualified stock option awards) (incorporated by reference to Exhibit No. 10.22 to the Registrant’s Form 10-K Annual Report for the fiscal year ended September 28, 2007, File No. 1-7598).</td>
</tr>
<tr>
<td>10.19†</td>
<td>Form of Registrant’s Nonqualified Stock Option Agreement under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (effective for nonqualified stock option awards granted to executive officers) (incorporated by reference to Exhibit No. 10.23 to the Registrant’s Form 10-K Annual Report for the fiscal year ended September 28, 2007, File No. 1-7598).</td>
</tr>
<tr>
<td>10.20†</td>
<td>Form of Registrant’s Nonqualified Stock Option Agreement under the Registrant’s Second Amended and Restated 2005 Omnibus Stock Plan (effective for nonqualified stock option awards granted to non-employee directors) (incorporated by reference to Exhibit No. 10.24 to the Registrant’s Form 10-K Annual Report for the fiscal year ended September 28, 2007, File No. 1-7598).</td>
</tr>
<tr>
<td>10.21†</td>
<td>Registrant’s Third 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, 2012, File No. 1-7598).</td>
</tr>
<tr>
<td>10.22†</td>
<td>Form of Registrant’s Nonqualified Stock Option Agreement under the Registrant’s Third 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 March 30, 2012, File No. 1-7598).</td>
</tr>
<tr>
<td>10.23‡</td>
<td>Form of Registrant’s Nonqualified Stock Option Agreement under the Registrant’s Third Amended and Restated 2005 Omnibus Stock Plan (effective for nonqualified stock option awards granted to executive officers after November 8, 2015) (incorporated by reference to Exhibit No. 10.1 to the Registrant’s Form 8-K Current Report filed as of November 12, 2015, File No. 1-7598).</td>
</tr>
<tr>
<td>10.24†</td>
<td>Form of Registrant’s Non-Employee Director Nonqualified Stock Option Agreement under the Registrant’s Third Amended and Restated 2005 Omnibus Stock Option Plan (incorporated by reference to Exhibit No. 10.3 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended March 30, 2012, File No. 1-7598).</td>
</tr>
<tr>
<td>Exhibit Number</td>
<td>Description</td>
</tr>
<tr>
<td>----------------</td>
<td>-------------</td>
</tr>
<tr>
<td>10.27†</td>
<td>Form of Registrant’s Restricted Stock Unit Agreement under the Registrant’s Third Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.5 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended March 30, 2012, File No. 1-7598).</td>
</tr>
<tr>
<td>10.28†</td>
<td>Form of Registrant’s Restricted Stock Unit Agreement under the Registrant’s Third Amended and Restated 2005 Omnibus Stock Plan (effective for restricted stock unit awards granted to executive officers on or after October 1, 2013 and prior to November 9, 2015) (incorporated by reference to Exhibit No. 10.2 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended December 27, 2013, File No. 1-7598).</td>
</tr>
<tr>
<td>10.29†</td>
<td>Form of Registrant’s Restricted Stock Unit Agreement under the Registrant’s Third Amended and Restated 2005 Omnibus Stock Plan (effective for restricted stock unit awards granted to executive officers after November 8, 2015) (incorporated by reference to Exhibit No. 10.2 to the Registrant’s Form 8-K Current Report filed as of November 12, 2015, File No. 1-7598).</td>
</tr>
<tr>
<td>10.30†*</td>
<td>Form of Registrant’s Performance Unit Agreement under the Registrant’s Third Amended and Restated 2005 Omnibus Stock Plan.</td>
</tr>
<tr>
<td>10.31†*</td>
<td>Form of Registrant’s Performance Unit Agreement under the Registrant’s Third Amended and Restated 2005 Omnibus Stock Plan (effective for performance unit awards granted to executive officers on or after October 1, 2013 and prior to November 9, 2015).</td>
</tr>
<tr>
<td>10.32†</td>
<td>Form of Registrant’s Performance Unit Agreement under the Registrant’s Third Amended and Restated 2005 Omnibus Stock Plan (effective for performance unit awards granted to executive officers after November 8, 2015) (incorporated by reference to Exhibit No. 10.3 to the Registrant’s Form 8-K Current Report filed as of November 12, 2015, 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 Third Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.7 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended March 30, 2012, File No. 1-7598).</td>
</tr>
<tr>
<td>10.34†</td>
<td>Form of Registrant’s Non-Employee Grant Agreement for Deferred Stock Units (for use in Singapore) under the Registrant’s Third Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit 10.8 of the Registrant’s Form 10-Q Quarterly Report for the quarter ended March 30, 2012, File No. 1-7598).</td>
</tr>
<tr>
<td>10.35†</td>
<td>Form of Registrant’s Non-Employee Grant Agreement for Deferred Stock Units (for use outside of U.S. except for Singapore) under the Registrant’s Third Amended and Restated 2005 Omnibus Stock Plan (incorporated by reference to Exhibit No. 10.31 to the Registrant’s Form 10-K Annual Report for the year ended September 28, 2012, File No. 1-7598).</td>
</tr>
<tr>
<td>10.36</td>
<td>Credit Agreement, dated as of August 27, 2013, among the Registrant, Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer and each lender from time to time party thereto (incorporated by reference to Exhibit No. 10.32 to the Registrant’s Form 10-K Annual Report for the year ended September 26, 2014, File No. 1-7598).</td>
</tr>
<tr>
<td>10.37</td>
<td>Amendment No. 1, effective as of September 27, 2013, to the Credit Agreement, dated as of August 27, 2013, among the Registrant, Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer and each of the lenders signatory thereto (incorporated by reference to Exhibit No. 10.1 to the Registrant’s Form 10-Q Quarterly Report for the quarter ended December 27, 2013, File No. 1-7598).</td>
</tr>
<tr>
<td>10.39*</td>
<td>First Amendment to Loan and Security Agreement and Other Loan Documents among ORIX Capital Markets, LLC, California Proton Treatment Center, LLC and Jeffrey L. Bordox and James Thomson, dated as of October 25, 2013.</td>
</tr>
<tr>
<td>Exhibit Number</td>
<td>Description</td>
</tr>
<tr>
<td>----------------</td>
<td>-------------</td>
</tr>
<tr>
<td>10.41*</td>
<td>Third Amendment to Loan and Security Agreement and Other Loan Documents And Amendment to Fee Deed of Trust and Leasehold Deed of Trust among ORIX Capital Markets, LLC, ORIX Capital Markets, LLC, Varian Medical Systems International AG, and JP Morgan Chase Bank, N.A., dated as of November 6, 2015.</td>
</tr>
<tr>
<td>10.43++</td>
<td>Loan and Security Agreement (Building Loan) dated as of July 15, 2015 by and among MM PROTON I, LLC, as Borrower; JPMORGAN CHASE BANK, N.A., as Administrative Agent and Collateral Agent; and the Lenders referenced therein. “Lenders” includes the Registrant.</td>
</tr>
<tr>
<td>10.44++</td>
<td>First Amendment to Loan and Security Agreement (Building Loan) dated as of August 5, 2015 by and among MM PROTON I, LLC, as Borrower; JPMORGAN CHASE BANK, N.A., as Administrative Agent and Collateral Agent; and the Lenders referenced therein. “Lenders” includes the Registrant.</td>
</tr>
<tr>
<td>10.46++</td>
<td>Amendment No. One to Loan and Security Agreement (Project Loan) dated as of July 31, 2015 by and among MM PROTON I, LLC, as Borrower; JPMORGAN CHASE BANK, N.A., as Administrative Agent and Collateral Agent, and the Lenders referenced therein. “Lenders” includes the Registrant.</td>
</tr>
<tr>
<td>21*</td>
<td>List of Subsidiaries as of November 1, 2015.</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>
</tr>
<tr>
<td>101.INS</td>
<td>XBRL Instance Document</td>
</tr>
<tr>
<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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<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>
</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.
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.

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 within sixty (60) days prior to and including 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 as of ________, shall be settled on their originally scheduled vesting dates. In the event that a Change in Control is not consummated, Employee shall not be entitled to any payments or benefits on account of Employee’s termination described in 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 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(c); 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.
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 ______________, or (y) on the originally scheduled vesting dates for awards outstanding as of ______________.

(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 event Employee’s termination in 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:                                      If to the Company:
                                                      Varian Medical Systems, Inc.
                                                      3100 Hansen Way
                                                      Palo Alto, CA 94304-1000
                                                      Attn: Senior Vice President, Chief Human Resource Officer

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, including, without limitation, the Change in Control Agreement between Employee and the Company dated ____________, including any amendments thereto.

   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]                        [Name]  ____________________
Title: [Title]
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 ___________, by and between VARIAN MEDICAL SYSTEMS, INC., a Delaware corporation (the “Company”), 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.
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 within sixty (60) days prior to and including 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. In the event that a Change in Control is not consummated, Employee shall not be entitled to any payments or benefits on account of Employee’s termination described in 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.

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 2.50 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 within five (5) business days following the Release Deadline.

   (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:

________________
________________
________________

If to the Company:

Varian Medical Systems, Inc.
3100 Hansen Way
Palo Alto, CA 94304-1000
Attn: Senior Vice President, Chief Human Resource Officer

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, including, without limitation, the Change in Control Agreement between Employee and the Company dated ______________, including any amendments thereto.

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] [NAME]
Title: [TITLE]
CHANGE IN CONTROL AGREEMENT FOR SENIOR EXECUTIVES

THIS CHANGE IN CONTROL AGREEMENT ("Agreement") is entered into effective as of ________, by and between VARIAN MEDICAL SYSTEMS, INC., a Delaware corporation (the "Company"), 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.

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 within sixty (60) days prior to and including 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 as of __________ shall be settled on their originally scheduled vesting dates. In the event that a Change in Control is not consummated, Employee shall not be entitled to any payments or benefits on account of Employee’s termination described in 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 by Employee to 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 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.

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 2.50 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 __________, or (y) on the originally scheduled vesting dates for awards outstanding as of __________.

(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: (i) 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.

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(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 to be at the time of such termination of employment 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.
   ______________________
   ______________________
   ______________________
   Attn: Senior Vice President, Chief Human Resource Officer
   3100 Hansen Way
   Palo Alto, CA 94304-1000
   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.
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.

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 [IF APPLICABLE: including, without limitation, the Change in Control Agreement between Employee and the Company dated ______________, including any amendments thereto].

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] [Name]
Title: [Title] [Title]
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"), 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.

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 within sixty (60) days prior to and including 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 [IF APPLICABLE: and accelerated restricted stock units outstanding on __________, shall be settled on their originally scheduled vesting dates]. In the event that a Change in Control is not consummated, Employee shall not be entitled to any payments or benefits on account of Employee’s termination described in 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
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 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.
(c) 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 [ALTERNATIVE 1: within five (5) business days following the Release Deadline] or [ALTERNATIVE 2: (x) within five (5) business days following the Release Deadline with respect to awards granted after __________, or (y) on the originally scheduled vesting dates for awards outstanding as of ________].

(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 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. 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:
(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 [IF APPLICABLE: including, without limitation, the Change in Control Agreement between Employee and the Company dated ______________, including any amendments thereto].

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] [NAME] Title: [TITLE]
VARIAN MEDICAL SYSTEMS, INC.

MANAGEMENT INCENTIVE PLAN

(Amended as of November 14, 2013)
SECTION 1
BACKGROUND, PURPOSE AND DURATION

1.1 Effective Date. This amended and restated Plan is effective as of the date on which VAI distributes shares of the common stock of Varian, Inc. and Varian Semiconductor Equipment Associates, Inc. to the stockholders of VAI, subject to the approval of the Plan by a majority of the shares of the common stock of VAI which are present in person or by proxy and entitled to vote at the 1999 Annual and Special Meeting of Stockholders of VAI.

1.2 Purpose of the Plan. The Plan is intended to increase shareholder value and the success of the Company by motivating key executives (1) to perform to the best of their abilities, and (2) to achieve the Company’s objectives. The Plan’s goals are to be achieved by providing such executives with incentive awards based on the achievement of goals relating to the performance of the Company and its business units. The Plan is intended to permit the grant of awards that qualify as performance-based compensation under section 162(m) of the Code.

SECTION 2
DEFINITIONS

The following words and phrases shall have the following meanings unless a different meaning is plainly required by the context:

2.1 “Actual Award” means as to any Performance Period, the actual award (if any) payable to a Participant for the Performance Period. Each Actual Award is determined by the Payout Formula for the Performance Period, subject to the Committee’s authority under Section 3.5 to reduce the award otherwise determined by the Payout Formula.

2.2 “Affiliate” means any corporation or other entity (including, but not limited to, partnerships and joint ventures) controlling, controlled by, or under common control with the Company.

2.3 “Base Salary” means as to any Performance Period, the Participant’s annualized salary rate on the last day of the Performance Period. Such Base Salary shall be before both (a) deductions for taxes or benefits, and (b) deferrals of compensation pursuant to Company-sponsored plans.

2.4 “Board” means the Board of Directors of the Company.

2.5 “Code” means the Internal Revenue Code of 1986, as amended. Reference to a specific section of the Code or regulation thereunder shall include such section or regulation, any valid regulation promulgated thereunder, and any comparable provision of any future legislation or regulation amending, supplementing or superseding such section or regulation.

2.6 “Committee” means the committee appointed by the Board (pursuant to Section 5.1) to administer the Plan.

2.7 “Company” means Varian Medical Systems, Inc., a Delaware corporation, or any successor thereto.

2.8 “Disability” means a permanent and total disability determined in accordance with uniform and nondiscriminatory standards adopted by the Committee from time to time.
2.9  “EBIT” means as to any Performance Period, the Company’s or a business unit’s income before reductions for interest and taxes, determined in accordance with generally accepted accounting principles.

2.10  “EBITDA” means as to any Performance Period, the Company’s or a business unit’s income before reductions for interest, taxes, depreciation and amortization, determined in accordance with generally accepted accounting principles.

2.11  “Earnings Per Share” means as to any Performance Period, the Company’s or a business unit’s Net Income, divided by a weighted average number of common shares outstanding and dilutive common equivalent shares deemed outstanding, determined in accordance with generally accepted accounting principles.

2.12  “Employee” means any employee of the Company or of an Affiliate, whether such employee is so employed at the time the Plan is adopted or becomes so employed subsequent to the adoption of the Plan.

2.13  “Fiscal Year” means any fiscal year of the Company.

2.14  “Maximum Award” means as to any Actual Award to any Participant for any Performance Period, $3 million.

2.15  “Net Income” means as to any Performance Period, the Company’s or a business unit’s income after taxes, determined in accordance with generally accepted accounting principles.

2.16  “Net Orders” means as to any Performance Period, the Company’s or a business unit’s net orders calculated (and reviewed by the Company's external independent auditors in accordance with agreed standard procedures) for and reported in the Company's quarterly financial earnings press release filed by the Company on a Current Report on Form 8-K.

2.17  “Operating Cash Flow” means as to any Performance Period, the Company’s or a business unit’s sum of Net Income plus depreciation and amortization less capital expenditures plus changes in working capital comprised of accounts receivable, inventories, other current assets, trade accounts payable, accrued expenses, product warranty, advance payments from customers and long-term accrued expenses, determined in accordance with generally acceptable accounting principles.

2.18  “Participant” means as to any Performance Period, an Employee who has been selected by the Committee for participation in the Plan for that Performance Period.

2.19  “Payout Formula” means as to any Performance Period, the formula or payout matrix established by the Committee pursuant to Section 3.4 in order to determine the Actual Awards (if any) to be paid to Participants. The formula or matrix may differ from Participant to Participant.

2.20  “Performance Goals” means the goal(s) (or combined goal(s)) determined by the Committee (in its discretion) to be applicable to a Participant for a Target Award for a Performance Period. As determined by the Committee, the Performance Goals for any Target Award applicable to a Participant may provide for a targeted level or levels of achievement using one or more of the following measures: (a) EBIT, (b) EBITDA, (c) Earnings Per Share, (d) Net Income, (e) Operating Cash Flow, (f) Return on Assets, (g) Return on Equity, (h) Return on Sales, (i) Revenue, (j) Shareholder Return, (k) orders or Net Orders, (l) expenses, (m) cost of goods sold, (n) profit/loss or profit margin, (o) working capital, (p) operating income, (q) cash flow, (r) market share, (s) return on equity, (t) economic value add, (u) stock price of the Company’s stock, (v) price/earning ratio, (w) debt or debt-to-equity ratio, (x) accounts receivable, (y) cash, (z) write-off, (aa) assets, (bb) liquidity, (cc) operations, (dd) intellectual property (e.g., patents), (ee) product development, (ff) regulatory activities, (gg) manufacturing, production or inventory, (hh) mergers, acquisitions or divestitures, (ii) financings, (jj) days sales outstanding, (kk) backlog, (ll) deferred revenue, and (mm) employee
headcount. The Performance Goals may differ from Participant to Participant and from award to award. Prior to the Determination Date, the Committee shall determine whether any significant element(s) shall be included in or excluded from the calculation of any Performance Goal with respect to any Participants. “Determination Date” means the latest possible date that will not jeopardize a Target Award’s qualification as performance-based compensation under section 162(m) of the Code.

2.21 “Performance Period” means any fiscal period not to exceed three consecutive Fiscal Years, as determined by the Committee in its sole discretion.

2.22 “Plan” means the Varian Medical Systems, Inc. Management Incentive Plan, as set forth in this instrument and as hereafter amended from time to time.

2.23 “Retirement” means, with respect to any Participant, “Retirement” as defined by the Company’s Retirement Policies, as they may be established from time to time.

2.24 “Return on Assets” means as to any Performance Period, the percentage equal to the Company’s or a business unit’s EBIT before incentive compensation, divided by average net Company or business unit, as applicable, assets, determined in accordance with generally accepted accounting principles.

2.25 “Return on Equity” means as to any Performance Period, the percentage equal to the Company’s Net Income divided by average stockholder’s equity, determined in accordance with generally accepted accounting principles.

2.26 “Return on Sales” means as to any Performance Period, the percentage equal to the Company’s or a business unit’s EBIT before incentive compensation, divided by the Company’s or the business unit’s, as applicable, Revenue, determined in accordance with generally accepted accounting principles.

2.27 “Revenue” means as to any Performance Period, the Company’s or a business unit’s net sales, determined in accordance with generally accepted accounting principles.

2.28 “Shareholder Return” means as to any Performance Period, the total return (change in share price plus reinvestment of any dividends) of a Share.

2.29 “Shares” means shares of the Company’s common stock, $1.00 par value.

2.30 “Target Award” means the target award payable under the Plan to a Participant for the Performance Period, expressed as a percentage of his or her Base Salary, as determined by the Committee in accordance with Section 3.3.


SECTION 3

SELECTION OF PARTICIPANTS AND DETERMINATION OF AWARDS

3.1 Selection of Participants. The Committee, in its sole discretion, shall select the Employees of the Company who shall be Participants for any Performance Period. Participation in the Plan is in the sole discretion of the Committee, and on a Performance Period by Performance Period basis. Accordingly, an Employee who is a Participant for a given Performance Period in no way is guaranteed or assured of being selected for participation in any subsequent Performance Period or Periods.
3.2 **Determination of Performance Goals.** The Committee, in its sole discretion, shall establish the Performance Goals for each Participant for the Performance Period. Such Performance Goals shall be set forth in writing.

3.3 **Determination of Target Awards.** The Committee, in its sole discretion, shall establish a Target Award for each Participant. Each Participant’s Target Award shall be determined by the Committee in its sole discretion, and each Target Award shall be set forth in writing.

3.4 **Determination of Payout Formula or Formulae.** On or prior to the Determination Date, the Committee, in its sole discretion, shall establish a Payout Formula or Formulae for purposes of determining the Actual Award (if any) payable to each Participant. Each Payout Formula shall (a) be in writing, (b) be based on a comparison of actual performance to the Performance Goals, (c) provide for the payment of a Participant’s Target Award if the Performance Goals for the Performance Period are achieved, and (d) provide for an Actual Award greater than or less than the Participant’s Target Award, depending upon the extent to which actual performance exceeds or falls below the Performance Goals. Notwithstanding the preceding, no Participant’s Actual Award under the Plan may exceed his or her Maximum Award.

3.5 **Determination of Actual Awards.** After the end of each Performance Period, the Committee shall certify in writing the extent to which the Performance Goals applicable to each Participant for the Performance Period were achieved or exceeded. The Actual Award for each Participant shall be determined by applying the Payout Formula to the level of actual performance which has been certified by the Committee. Notwithstanding any contrary provision of the Plan, the Committee, in its sole discretion, may (a) eliminate or reduce the Actual Award payable to any Participant below that which otherwise would be payable under the Payout Formula, and (b) determine what Actual Award, if any, will be paid in the event of a termination of employment prior to the end of the Performance Period. The total aggregate Actual Awards under the Plan with respect to any Performance Period shall not exceed eight percent (8%) of the Company’s EBIT (but before incentive compensation) for the most recent completed Fiscal Year. If the total aggregate Actual Awards with respect to a Performance Period would exceed this aggregate limit, all such Actual Awards shall be pro-rated on an equal basis among all Participants according to a formula established by the Committee.

**SECTION 4**

**PAYMENT OF AWARDS**

4.1 **Right to Receive Payment.** Each Actual Award that may become payable under the Plan shall be paid solely from the general assets of the Company. Nothing in this Plan shall be construed to create a trust or to establish or evidence any Participant’s claim of any right other than as an unsecured general creditor with respect to any payment to which he or she may be entitled.

4.2 **Timing of Payment.** Except as determined by the Committee with respect to multi-fiscal year Performance Periods, payment of each Actual Award shall be made no later than the 15th day of the third month following the end of the Performance Period during which the Award was earned.

4.3 **Form of Payment.** Each Actual Award normally shall be paid in cash (or its equivalent) in a single lump sum. However, the Committee, in its sole discretion, may declare any Actual Award, in whole or in part, payable in stock granted under the Company’s Omnibus Stock Plan. The number of Shares granted shall be determined by dividing the cash amount foregone by the fair market value of a Share on the date that the cash payment otherwise would have been made. For this purpose, “fair market value” shall mean the closing price on the Nasdaq National Market for the day in question.

4.4 **Payment in the Event of Death.** If a Participant dies prior to the payment of an Actual Award earned by him or her prior to death for a prior Performance Period, the Award shall be paid to his or her estate.
4.5 Recoupment Policy. Notwithstanding anything to the contrary set forth in the Plan or elsewhere, in the event of a restatement of incorrect financial results, the Board will review the conduct of executive officers in relation to the restatement. If the Board determines that an executive officer has engaged in misconduct or other violations of the Company’s code of ethics in connection with the restatement, the Board would, in its discretion, take appropriate action to remedy the misconduct, including, without limitation, seeking reimbursement of any portion of performance-based or incentive compensation paid or awarded to the executive under the Plan that is greater than what would have been paid or awarded if calculated based on the restated financial results, to the extent not prohibited by governing law. For this purpose, the term "executive officer" means executive officers as defined by the Securities Exchange Act of 1934, as amended. Such action by the Board would be in addition to any other actions the Board or the Company may take under the Company’s policies, as modified from time to time, or any actions imposed by law enforcement, regulators or other authorities.

SECTION 5
ADMINISTRATION

5.1 Committee is the Administrator. The Plan shall be administered by the Committee. The Committee shall consist of not less than two (2) members of the Board. The members of the Committee shall be appointed from time to time by, and serve at the pleasure of, the Board. Each member of the Committee shall qualify as an “outside director” under section 162(m) of the Code. If it is later determined that one or more members of the Committee do not so qualify, actions taken by the Committee prior to such determination shall be valid despite such failure to qualify.

5.2 Committee Authority. It shall be the duty of the Committee to administer the Plan in accordance with the Plan's provisions. The Committee shall have all powers and discretion necessary or appropriate to administer the Plan and to control its operation, including, but not limited to, the power to (a) determine which Employees shall be granted awards, (b) prescribe the terms and conditions of awards, (c) interpret the Plan and the awards, (d) adopt such procedures and subplans as are necessary or appropriate to permit participation in the Plan by Employees who are foreign nationals or employed outside of the United States, (e) adopt rules for the administration, interpretation and application of the Plan as are consistent therewith, and (f) interpret, amend or revoke any such rules.

5.3 Decisions Binding. All determinations and decisions made by the Committee, the Board, and any delegate of the Committee pursuant to the provisions of the Plan shall be final, conclusive, and binding on all persons, and shall be given the maximum deference permitted by law.

5.4 Delegation by the Committee. The Committee, in its sole discretion and on such terms and conditions as it may provide, may delegate all or part of its authority and powers under the Plan to one or more directors and/or officers of the Company; provided, however, that the Committee may delegate its authority and powers only with respect to awards that are not intended to qualify as performance-based compensation under section 162(m) of the Code.

SECTION 6
GENERAL PROVISIONS

6.1 Tax Withholding. The Company shall withhold all applicable taxes from any Actual Award, including any federal, state and local taxes (including the Participant’s FICA obligation).

6.2 No Effect on Employment or Service. Nothing in the Plan shall interfere with or limit in any way the right of the Company to terminate any Participant's employment or service at any time, with or without cause. For purposes of the Plan, transfer of employment of a Participant between the Company and any one of its Affiliates (or between Affiliates) shall not be deemed a Termination of Service. Employment with the Company and its Affiliates is on an at-will basis only. The Company expressly reserves the right, which may be exercised at any time and without regard to when during a Performance Period such exercise occurs, to terminate any individual’s employment
with or without cause, and to treat him or her without regard to the effect which such treatment might have upon him or her as a Participant.

6.3 Participation. No Employee shall have the right to be selected to receive an award under this Plan, or, having been so selected, to be selected to receive a future award.

6.4 Indemnification. Each person who is or shall have been a member of the Committee, or of the Board, shall be indemnified and held harmless by the Company against and from (a) any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan or any award, and (b) from any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such claim, action, suit, or proceeding against him or her, provided he or she shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Certificate of Incorporation or Bylaws, by contract, as a matter of law, or otherwise, or under any power that the Company may have to indemnify them or hold them harmless.

6.5 Successors. All obligations of the Company under the Plan, with respect to awards granted hereunder, shall be binding on any successor to the Company, whether the existence of such successor is the result of a direct or indirect purchase, merger, consolidation, or otherwise, of all or substantially all of the business or assets of the Company.

6.6 Beneficiary Designations. If permitted by the Committee, a Participant under the Plan may name a beneficiary or beneficiaries to whom any vested but unpaid award shall be paid in the event of the Participant's death. Each such designation shall revoke all prior designations by the Participant and shall be effective only if given in a form and manner acceptable to the Committee. In the absence of any such designation, any vested benefits remaining unpaid at the Participant's death shall be paid to the Participant's estate.

6.7 Nontransferability of Awards. No award granted under the Plan may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated, other than by will, by the laws of descent and distribution, or to the limited extent provided in Section 6.6. All rights with respect to an award granted to a Participant shall be available during his or her lifetime only to the Participant.

6.8 Deferrals. The Committee, in its sole discretion, may permit a Participant to defer receipt of the payment of cash that would otherwise be delivered to a Participant under the Plan. Any such deferral elections shall be subject to such rules and procedures as shall be determined by the Committee in its sole discretion.

SECTION 7
AMENDMENT, TERMINATION AND DURATION

7.1 Amendment, Suspension or Termination. The Board, in its sole discretion, may amend or terminate the Plan, or any part thereof, at any time and for any reason. The amendment, suspension or termination of the Plan shall not, without the consent of the Participant, alter or impair any rights or obligations under any Target Award theretofore granted to such Participant. No award may be granted during any period of suspension or after termination of the Plan.

7.2 Duration of the Plan. The Plan shall commence on the date specified herein, and subject to Section 7.1 (regarding the Board's right to amend or terminate the Plan), shall remain in effect thereafter.
SECTION 8
LEGAL CONSTRUCTION

8.1 Gender and Number. Except where otherwise indicated by the context, any masculine term used herein also shall include the feminine; the plural shall include the singular and the singular shall include the plural.

8.2 Severability. In the event any provision of the Plan shall be held illegal or invalid for any reason, the illegality or invalidity shall not affect the remaining parts of the Plan, and the Plan shall be construed and enforced as if the illegal or invalid provision had not been included.

8.3 Requirements of Law. The granting of awards under the Plan shall be subject to all applicable laws, rules and regulations, and to such approvals by any governmental agencies or national securities exchanges as may be required.

8.4 Governing Law. The Plan and all awards shall be construed in accordance with and governed by the laws of the State of California, but without regard to its conflict of law provisions.

8.5 Captions. Captions are provided herein for convenience only, and shall not serve as a basis for interpretation or construction of the Plan.

EXECUTION

IN WITNESS WHEREOF, Varian Medical Systems, Inc., by its duly authorized officer, has executed the Plan on the date indicated below.

VARIAN MEDICAL SYSTEMS, INC.

Dated: November 14, 2013    By: /s/ John W. Kuo

John W. Kuo
Corporate Vice President, General
Counsel & Secretary
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An extra section break has been inserted above this paragraph. Do not delete this section break if you plan to add text after the Table of Contents/Authorities. Deleting this break will cause Table of Contents/Authorities headers and footers to appear on any pages following the Table of Contents/Authorities.
Varian Medical Systems, Inc. (the “Company”) does not have a written employment agreement with any of its executive officers. The annual base salary for calendar year 2016 for each of the Company’s Principal Executive Officer, Principal Financial Officer, and certain executive officers (the “executive officers”) is as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Base Salary</th>
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<tbody>
<tr>
<td>Dow R. Wilson, President and Chief Executive Officer</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Elisha W. Finney, Executive Vice President, Finance and Chief Financial Officer</td>
<td>$616,650</td>
</tr>
<tr>
<td>Kolleen T. Kennedy, Executive Vice President and President, Oncology Systems</td>
<td>$630,156</td>
</tr>
<tr>
<td>Sunny S. Sanyal, Senior Vice President and President, Imaging Components Business</td>
<td>$496,800</td>
</tr>
<tr>
<td>John W. Kuo, Senior Vice President, General Counsel and Corporate Secretary</td>
<td>$462,961</td>
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On November 20, 2015, the Compensation and Management Development Committee (the “Compensation Committee”) set the performance goals for fiscal year 2016 under the Company’s Management Incentive Plan (“MIP”) for the executive officers. For fiscal year 2016, the Compensation Committee established a pool of funds equal to one and one-quarter percent (1.25%) of the Company’s fiscal year 2016 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 executive officers less than their corresponding share of the MIP Bonus Pool. Such discretion shall be exercised by the Compensation Committee based on the achievement of performance goals in the following categories in fiscal year 2016 and any other factors determined by the Compensation Committee in its sole discretion: EBIT growth, orders and revenue growth, the executive officer’s individual performance and such other factors determined by the Compensation Committee in its sole discretion. Payment under the MIP to the executive officers may vary from $0 to the maximum of the lesser of two times their target participation level or a specified percentage of the MIP Bonus Pool based upon achievement of such performance goals.
Set forth below are payout levels for each executive officer if the target and maximum levels under the MIP are achieved:

<table>
<thead>
<tr>
<th>Name</th>
<th>Target</th>
<th>Maximum (the lesser of the following)</th>
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<td></td>
<td>As a % of base salary</td>
<td>As a % of base salary</td>
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<tr>
<td>Dow R. Wilson</td>
<td>125 %</td>
<td>250 %</td>
</tr>
<tr>
<td>Elisha W. Finney</td>
<td>83 %</td>
<td>166 %</td>
</tr>
<tr>
<td>Kolleen T. Kennedy</td>
<td>83 %</td>
<td>166 %</td>
</tr>
<tr>
<td>Sunny S. Sanyal</td>
<td>75 %</td>
<td>150 %</td>
</tr>
<tr>
<td>John W. Kuo</td>
<td>75 %</td>
<td>150 %</td>
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These executive officers have also been extended certain perquisites, such as use of a leased automobile under the Company’s Executive Car Program. This Executive Car Program, which was discontinued effective January 1, 2015, provided a leased vehicle costing up to $82,000 for the Chief Executive Officer and leased vehicles costing up to $68,000 for the other executive officers and covered insurance, maintenance expenses and fuel costs. Participants had an option to purchase the car at the end of its three-year lease period or upon retirement.

The Company does not permit its executive officers to use the Company’s fractionally owned aircraft for purely personal trips. However, the Company allows and includes in an executive officer’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. There was minimal spousal use of the aircraft in fiscal year 2015 valued at $2,582.40.

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 uncapped 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 executive officers and other highly compensated individuals, the Company also provides a Company supplemental contribution match representing retirement contributions which could not be contributed to the executive officers’ qualified retirement accounts due to Internal Revenue Code limitations.

**Compensation of Directors**

*Annual Cash Compensation*. Each non-employee director receives an annual retainer of $100,000. The Chairman of the Board receives an additional annual retainer of $100,000. The chairs of the Ethics and Compliance Committee and the Nominating and Corporate Governance Committee also receive an additional $12,000 annual retainer for serving in these positions, the chair of the Compensation and Management Development Committee Chair receives an additional $15,000 and the chair of the Audit Committee Chair receives an additional $20,000. Each non-employee director also receives $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 Deferred Stock Units having a fair market value on the date of grant of $160,000, 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).
VARIAN MEDICAL SYSTEMS, INC.
Third Amended and Restated 2005 Omnibus Stock Plan

PERFORMANCE UNIT AGREEMENT

Varian Medical Systems, Inc. (the “Company”) hereby awards to the designated employee (“Employee”), Performance Units under the Company’s Third Amended and Restated 2005 Omnibus Stock Plan (the “Plan”). The Performance Units awarded under this Performance Unit Agreement (the “Agreement”) consist of the right to receive shares of common stock of the Company (“Shares”). The Grant Date is the date of this Agreement (the “Grant Date”). Subject to the provisions of Appendix A of this Agreement (“Appendix A”) (attached) and of the Plan, the principal features of this award are as follows:

**Number of Performance Units at or Below Threshold Performance**: Zero (0)

**Number of Performance Units at Target Performance**: (Your Target Grant)

**Maximum Number of Performance Units**: (Potential Maximum)

**Performance Period**: ________ through __________ (the “Performance Period”)

**Performance Goals**: The actual number of Shares to be earned under this award will be determined based on the performance goals set forth in Appendix B which shall be separately provided to Employee by the Company (the “Performance Goals”). Such Performance Goals and the extent to which they have been achieved will be determined by the Compensation and Management Development Committee (the “Committee”) of the Board of Directors of the Company (the “Board”), in its sole discretion. The number of Shares earned on account of performance between threshold and target or between target and maximum shall be determined in accordance with the applicable performance curve(s) set forth in Appendix B which shall be separately provided to Employee by the Company.

As provided in the Plan, this Agreement and Appendix A, this Award may terminate before the end of the Performance Period. For example, if Employee’s employment ends before the end of the Performance Period, this Award will terminate at the same time as such termination unless an exception applies as set forth in Appendix A. Important additional information on vesting and forfeiture of the Performance Units covered by this Award is contained in Paragraphs 2 through 7 of Appendix A.

Your signature below indicates your agreement and understanding that this award is subject to all of the terms and conditions contained in Appendix A and the Plan. For example, important additional information on vesting and forfeiture of the Performance Units covered by this award is contained in Paragraphs 2 through 7 of Appendix A. PLEASE BE SURE TO READ ALL OF APPENDIX A, WHICH CONTAINS THE SPECIFIC TERMS AND CONDITIONS OF THIS AGREEMENT. YOU CAN REQUEST A COPY OF THE PLAN BY CONTACTING THE CORPORATE HUMAN RESOURCES OFFICE IN PALO ALTO, CALIFORNIA. TO THE EXTENT ANY CAPITALIZED TERMS USED IN APPENDIX A ARE NOT DEFINED HEREIN, THEY WILL HAVE THE MEANING ASCRIBED TO THEM IN THE PLAN.

VARIAN MEDICAL SYSTEMS, INC. 

By: ____________________________

[NAME]

EMPLOYEE

[Title]

APPENDIX A

TERMS AND CONDITIONS OF PERFORMANCE UNITS

1. **Award**. The Company hereby awards to the Employee under the Plan as a separate incentive in connection with his or her employment, and not in lieu of any salary or other compensation for his or her services, an award of [NUMBER A] Performance Units on the date hereof, subject to all of the terms and conditions in this Agreement and the Plan.

2. **Vesting**. To the extent that the Performance Goals are achieved and Shares are earned (which may range from zero to [MAX NUMBER]), as determined and certified by the Committee in its sole discretion, then the earned Shares shall be paid following the end of the Performance Period no later than December 15 immediately following the end of the Performance Period (the “Settlement Date”) provided that Employee shall have been continuously employed by the Company or by one of its Affiliates from the Grant Date through the last day of the Performance Period (the “Employment Requirement”). For the avoidance of doubt, in the event that the Employment Requirement is waived pursuant to Paragraph 3, 4 or 6, except as set forth in Paragraph 7, payout of the Performance Units shall continue to depend on the extent to which the Performance Goals are achieved and Shares are earned, as determined and certified by the Committee in its sole discretion.

3. **Retirement**. If Employee was eligible for Retirement (defined as 55 years or more of age with 10 or more years of service with the Company or its
Affiliates, or age 65 or older) on the Grant Date and has a Termination of Service due to Retirement on or prior to the last day of the Performance Period, Employee shall be treated for purposes of this Agreement as having been continuously employed by the Company or by one of its Affiliates through the last day of the Performance Period; provided, however, that if the Employee’s Termination of Service due to the Employee’s Retirement occurs within one (1) year following the Grant Date, then the threshold, target and maximum number of Performance Units subject to this Agreement (and potential payouts in between) shall be adjusted proportionally by the time during such one (1) year period that the Employee remained an employee of the Company (based upon a 365 day year). For example, if the Employee is granted a target number of Performance Units equal to 6,000 and the Employee Terminated Service due to the Employee’s Retirement 30 days after the Grant Date, then the Employee’s target number of Performance Units would be reduced from 6,000 shares to 493 shares (6,000 x 30/365) and the balance of the Performance Units would be cancelled. For the avoidance of doubt, except as set forth in Paragraph 7, the actual number of Shares earned with respect to such adjusted number of Performance Units shall continue to depend on the extent to which the Performance Goals are achieved and Shares are earned, as determined and certified by the Committee in its sole discretion.

If Employee was not eligible for Retirement (defined as 55 years or more of age with 10 or more years of service with the Company or its Affiliates, or age 65 or older) on the Grant Date and has a Termination of Service due to Retirement on or prior to the last day of the Performance Period, Employee shall be treated for purposes of this Agreement as having been continuously employed by the Company or by one of its Affiliates through the last day of the Performance Period; provided, however, that the threshold, target and maximum number of Performance Units subject to this Agreement (and potential payouts in between) shall be adjusted proportionally by the time during the three (3) year Performance Period that the Employee remained an employee of the Company (based upon a 365 day year). For example, if the Employee is granted a target number of Performance Units equal to 6,000 and the Employee Terminated Service due to the Employee’s Retirement 30 days after the Grant Date, then the Employee’s target number of Performance Units would be reduced from 6,000 shares to 164 shares (6,000 x 30/365) and the balance of the Performance Units would be cancelled. For the avoidance of doubt, except as set forth in Paragraph 7, the actual number of Shares earned with respect to such adjusted number of Performance Units shall continue to depend on the extent to which the Performance Goals are achieved and Shares are earned, as determined and certified by the Committee in its sole discretion.

4. Committee Discretion. The Committee, in its absolute discretion, may waive the Employment Requirement with respect to all or any portion of the Performance Units at any time.

5. Forfeiture. Except as provided in Paragraphs 3, 4, 6 or 7(b) and notwithstanding any contrary provision of this Agreement, in the event that Employee ceases to be continuously employed by the Company or by one of its Affiliates through the last day of the Performance Period, the Performance Units shall thereupon be forfeited.

6. Death of Employee. In the event of the Employee’s death prior to Employee’s Termination of Service, Employee shall be treated for purposes of this Agreement as having been continuously employed by the Company or by one of its Affiliates through the last day of the Performance Period. Any distribution or delivery to be made to the Employee under this Agreement shall, if the Employee is then deceased, be made to the Employee’s designated beneficiary, or if neither beneficiary survives the Employee or the Committee does not permit beneficiary designations, to the administrator or executor of the Employee’s estate. Any designation of a beneficiary by the Employee shall be effective only if such designation is made in a form and manner acceptable to the Committee. Any transferee must furnish the Company with (a) written notice of his or her status as transferee, and (b) evidence satisfactory to the Company to establish the validity of the transfer and compliance with any laws or regulations pertaining to said transfer.

7. Change in Control.

(a) In the event of a Change in Control (defined below) in which the Performance Units are assumed, the Performance Goals shall be deemed to be satisfied at target and the target number of Shares (as adjusted pursuant to Section 12 hereof) shall be paid to the Employee on the Settlement Date provided that Employee shall have been continuously employed by the Company or by one of its Affiliates from the Grant Date through the last day of the original Performance Period (or shall have had a prior Termination of Service due to Retirement or death as described in the second to last sentence of this Section 7(a)). In the event Employee shall have had an earlier Termination of Service due to Retirement, such target number of Shares shall be prorated in accordance with Paragraph 3 hereof. If Employee has entered into a Change in Control Agreement (the “CIC Agreement”) with the Company on or prior to the date of the applicable Change in Control and the Employee’s employment terminates under the circumstances described in Section 2(d) or 4(a) of the CIC Agreement, then Employee shall become vested in the target number of Shares (as adjusted pursuant to Section 12 hereof, if applicable) upon the Release Deadline (as defined in the CIC Agreement) provided that Employee shall have executed and not revoked the Release (as defined in the CIC Agreement) by the Release Deadline and such Shares shall be paid to the Employee on the Settlement Date; provided, however, that if a Change in Control is not consummated, Employee shall return to the Company any payments provided to Employee in connection with an employment termination described in Section 2(d) of the CIC Agreement. In the event of any conflict between this Agreement and CIC Agreement, this Agreement shall control.

(b) Notwithstanding the foregoing or anything to the contrary set forth in the Plan or any other agreement or arrangement, in the event that the Performance Units are not assumed in connection with a Change in Control, the Performance Goals shall be deemed satisfied at target and the target number of Shares shall be paid to the Employee on the Settlement Date in the same form, and determined in accordance with the undiscounted value of, the consideration received by the holders of Shares in the Change in Control without the requirement that Employee shall have been continuously employed by the Company or by one of its Affiliates from the Grant Date through the last day of the original Performance Period and without the requirement that any portion of such payment be subject to any escrow, earn-out or similar provision.

For purposes of this Agreement, Change in Control shall mean the occurrence of any of the following:

(i) Any individual or group constituting a “person”, as such term is used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended, (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 (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 Securities Exchange Act of 1934, as amended) 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) 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.

8. Settlement of Performance Units.

(a) Status as a Creditor. Prior to settlement of any vested Performance Units, the Performance Units will represent an unfunded and unsecured obligation of the Company, payable (if at all) only from the general assets of the Company. The Employee is an unsecured general creditor of the Company, and settlement of vested Performance Units is subject to the claims of the Company’s creditors.

(b) Form and Timing of Settlement. Performance Units will automatically be settled in the form of Shares on the Settlement Date to the extent earned in accordance with the terms hereof. Fractional Shares will not be issued with respect to Performance Units. Where a fractional Share would be owed to the Employee with respect to vested Performance Units, a cash payment equivalent will be paid in place of any such fractional Share using the Fair Market Value on the relevant Settlement Date.

9. Tax Liability and Withholding. The Company or one if its Affiliates shall assess applicable tax liability and requirements in connection with the Employee’s participation in the Plan, including, without limitation, tax liability associated with the grant or settlement of Performance Units or sale of the underlying Shares (the “Tax Liability”). These requirements may change from time to time as laws or interpretations change. Regardless of the Company’s or the Affiliate’s actions in this regard, the Employee hereby acknowledges and agrees that the Tax Liability shall be the Employee’s responsibility and liability. The Employee acknowledges that the Company’s obligation to issue or deliver Shares shall be subject to satisfaction of the Tax Liability. Unless otherwise determined by the Company, Tax Liability shall be satisfied by the Company’s withholding all or a portion of any Shares that otherwise would be issued to the Employee upon settlement of the vested Performance Units; provided that amounts withheld shall not exceed the amount necessary to satisfy the Company’s tax withholding obligations (minimum tax withholding obligations if necessary to avoid adverse accounting consequences). Such withheld Shares shall be valued based on the Fair Market Value as of the date the withholding obligations are satisfied. The Company or one of its Affiliates may, at their discretion, use other methods to satisfy the Tax Liability. Furthermore, the Employee agrees to pay the Company or the Affiliate any Tax Liability that cannot be satisfied by the foregoing methods.

10. Rights as Stockholder. Neither the Employee nor any person claiming under or through the Employee shall have any of the rights or privileges of a stockholder of the Company in respect of any Performance Units (whether vested or unvested) unless and until such Performance Units are settled in Shares and certificates representing such Shares shall have been issued, recorded on the records of the Company or its transfer agents or registrars, and delivered to the Employee. After such issuance, recordation and delivery, the Employee shall have all the rights of a stockholder of the Company with respect to voting such Shares and receipt of dividends and distributions on such Shares. This Agreement does not provide for dividend equivalents.

11. Acknowledgments. The Employee acknowledges and agrees to the following:

* The Plan is discretionary in nature and the Committee may amend, suspend, or terminate it at any time;

* The grant of the Performance Units is voluntary and occasional and does not create any contractual or other right to receive future grants of Performance Units, or benefits in lieu of the Performance Units even if the Performance Units have been granted repeatedly in the past;

* All determinations with respect to such future Performance Units, if any, including but not limited to, the times when the Performance Units shall be granted or when the Performance Units shall vest, will be at the sole discretion of the Committee;

* The Employee’s participation in the Plan is voluntary;

* The value of the Performance Units is an extraordinary item of compensation, which is outside the scope of the Employee’s employment contract (if any), except as may otherwise be explicitly provided in the Employee’s employment contract (if any);

* The Performance Units are not part of normal or expected compensation or salary for any purpose, including, but not limited to, calculating termination, severance, resignation, redundancy, end of service, or similar payments, or bonuses, long-service awards, pension or retirement benefits;

* The future value of the Shares is unknown and cannot be predicted with certainty;

* No claim or entitlement to compensation or damages arises from the termination of the Award or diminution in value of the Performance Units or Shares, and the Employee irrevocably releases the Company and its Affiliates from any such claim that may arise;

* Neither the Plan nor the Performance Units shall be construed to create an employment relationship where any employment relationship did not otherwise already exist;
Nothing in this Agreement or the Plan shall confer upon the Employee any right to continue to be employed by the Company or any Affiliate or shall interfere with or restrict in any way the rights of the Company or the Affiliate, which are hereby expressly reserved, to terminate the employment of the Employee under applicable law;

The transfer of employment of the Employee between the Company and any one of its Affiliates (or between Affiliates) shall not be deemed a Termination of Service;

Nothing herein contained shall affect the Employee’s right to participate in and receive benefits under and in accordance with the then current provisions of any pension, insurance or other employee welfare plan or program of the Company or any Affiliate.

12. Changes in Stock. In the event that as a result of a stock dividend, stock split, reclassification, recapitalization, combination of Shares or the adjustment in capital stock of the Company or otherwise, or as a result of a merger, consolidation, spin-off or other reorganization, the Company’s common stock shall be increased, reduced or otherwise changed, the Performance Units shall, subject to Section 409A of the Code, be properly adjusted.

13. Address for Notices. Any notice to be given to the Company under the terms of this Agreement shall be addressed to the Company, in care of its Secretary, at 3100 Hansen Way, Palo Alto, California 94304, or at such other address as the Company may hereafter designate in writing.

14. Restrictions on Transfer. Except as provided in Paragraph 6 above, this award and the rights and privileges conferred hereunder shall not be transferred, assigned, pledged or hypothecated in any way (whether by operation of law or otherwise) and shall not be subject to sale under execution, attachment or similar process. Upon any attempt to transfer, assign, pledge, hypothecate or otherwise dispose of this award, or of any right or privilege conferred hereunder, or upon any attempted sale under any execution, attachment or similar process, this award and the rights and privileges conferred hereunder immediately shall become null and void. Regardless of whether the transfer or issuance of the Shares to be issued pursuant to this Agreement has been registered under the Securities Act of 1933, as amended (the "1933 Act") or has been registered or qualified under the securities laws of any state, the Company may impose additional restrictions upon the sale, pledge, or other transfer of the Shares (including the placement of appropriate legends on stock certificates and the issuance of stop-transfer instructions to the Company’s transfer agent) if, in the judgment of the Company and the Company’s counsel, such restrictions are necessary in order to achieve compliance with the provisions of the 1933 Act, the securities laws of any state, or any other law. Stock certificates evidencing the Shares issued pursuant to this Agreement, if any, may bear such restrictive legends as the Company and the Company’s counsel deem necessary under applicable laws or pursuant to this Agreement.

15. Binding Agreement. Subject to the limitation on the transferability of this award contained herein, this Agreement shall be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

16. Conditions of Issuance of Certificates for Stock. The Shares deliverable to the Employee upon settlement of vested Performance Units may be either previously authorized but unissued Shares or Shares which have been reacquired by the Company. The Company shall not be required to issue any certificate or certificates for Shares hereunder prior to fulfillment of all the following conditions: (a) the admission of such Shares to listing on all stock exchanges on which such class of stock is then listed; (b) the completion of any registration or other qualification of such Shares under any state or federal law or under the rulings or regulations of the Securities and Exchange Commission or any other governmental regulatory body, which the Committee shall, in its absolute discretion, deem necessary or advisable; (c) the approval or other clearance from any state or federal governmental regulatory body, which the Committee shall, in its absolute discretion, determine to be necessary or advisable; and (d) the lapse of such reasonable period of time following the Settlement Date as the Committee may establish from time to time for reasons of administrative convenience.

17. Plan Governs. This Agreement is subject to all terms and provisions of the Plan. In the event of a conflict between one or more provisions of this Agreement and one or more provisions of the Plan, the provisions of the Plan shall govern.

18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to its principles of conflicts of law.

19. Committee Authority. The Committee shall have the power to interpret the Plan and this Agreement, and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret or revoke any such rules. All actions taken and all interpretations and determinations made by the Committee in good faith shall be final and binding upon the Employee, the Company and all other interested persons. No member of the Committee shall be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or this Agreement. In its absolute discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Committee under the Plan and this Agreement.

20. Captions. Captions provided herein are for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

21. Severability. In the event that any provision in this Agreement shall be held invalid or unenforceable, such provision shall be severable from, and such invalidity or unenforceability shall not be construed to have any effect on, the remaining provisions of this Agreement.

22. Modifications to the Agreement. This Agreement constitutes the entire understanding of the parties on the subjects covered. The Employee expressly warrants that he or she is not executing this Agreement in reliance on any promises, representations, or inducements other than those contained herein. Modifications to this Agreement or the Plan can be made only in an express written contract executed by a duly authorized officer of the Company.

23. Amendment, Suspension or Termination of the Plan. By accepting this award, the Employee expressly warrants that he or she has received a right to an equity based award under the Plan, and has received, read, and understood a description of the Plan. The Employee understands that the Plan is discretionary in nature and may be modified, suspended, or terminated by the Company at any time.

24. Authorization to Release and Transfer Necessary Personal Information. The Employee hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of his or her personal data by and among, as applicable, the Company and the Affiliates for the exclusive purpose of implementing, administering and managing the Employee’s participation in the Plan. The Employee understands that the Company and the Affiliates may hold certain personal information about the Employee including, but not limited to, the Employee’s name, home address and telephone number, date of birth, social security number (or any other social or national identification number), salary, nationality, job title, number of Shares held and the details of all Performance Units, or any other entitlement to Shares awarded, cancelled, vested, unvested or outstanding for the purpose of implementing, administering and managing the Employee’s participation in the Plan (the "Data"). The Employee understands that the Data may be transferred to the Company or any of the
Affiliates, or to any third parties assisting in the implementation, administration and management of the Plan, that these recipients may be located in the Employee’s country or elsewhere, and that the recipients’ country may have different data privacy laws and protections than the Employee’s country. The Employee understands that he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local human resources representative. The Employee authorizes the recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, for the sole purpose of implementing, administering and managing his or her participation in the Plan, including any requisite transfer of such Data to a broker or other third party assisting with the administration of Performance Units under the Plan or with whom Shares acquired pursuant to the Performance Units or cash from the sale of such Shares may be deposited. Furthermore, the Employee acknowledges and understands that the transfer of the Data to the Company or the Affiliates or to any third parties is necessary for his or her participation in the Plan. The Employee understands that Data will be held only as long as is necessary to implement, administer and manage his or her participation in the Plan. The Employee understands that he or she may, at any time, view the Data, request additional information about the storage and processing of the Data, require any necessary amendments to the Data or refuse or withdraw the consents herein by contacting his or her local human resources representative in writing. The Employee further acknowledges that withdrawal of consent may affect his or her ability to vest in or realize benefits from the Performance Units, and his or her ability to participate in the Plan. For more information on the consequences of refusal to consent or withdrawal of consent, the Employee understands that he or she may contact his or her local human resources representative.

25. [Electronic Delivery: By executing this Agreement Employee consents to the electronic delivery of the Plan documents and this Agreement.]

26. [Execution of this Agreement: Execution of this Agreement, whether in writing or electronic, shall have the same binding effect and shall fully bind Employee and the Company to all of the terms and conditions set forth in this Agreement and the Plan.]
VARIAN MEDICAL SYSTEMS, INC.
Third Amended and Restated 2005 Omnibus Stock Plan

PERFORMANCE UNIT AGREEMENT

Varian Medical Systems, Inc. (the “Company”) hereby awards to the designated employee (“Employee”), Performance Units under the Company’s Third Amended and Restated 2005 Omnibus Stock Plan (the “Plan”). The Performance Units awarded under this Performance Unit Agreement (the “Agreement”) consist of the right to receive shares of common stock of the Company (“Shares”). The Grant Date is the date of this Agreement (the “Grant Date”). Subject to the provisions of Appendix A of this Agreement (“Appendix A”) (attached) and of the Plan, the principal features of this award are as follows:

Number of Performance Units at or Below Threshold Performance : Zero (0)

Number of Performance Units at Target Performance : (Your Target Grant)

Maximum Number of Performance Units : (Potential Maximum)

Performance Period : __________ through ____________ (the “Performance Period”)

Performance Goals : The actual number of Shares to be earned under this award will be determined based on the performance goals set forth in Appendix B which shall be separately provided to Employee by the Company (the “Performance Goals”). Such Performance Goals and the extent to which they have been achieved will be determined by the Compensation and Management Development Committee (the “Committee”) of the Board of Directors of the Company (the “Board”), in its sole discretion. The number of Shares earned on account of performance between threshold and target or between target and maximum shall be determined in accordance with the applicable performance curve(s) set forth in Appendix B which shall be separately provided to Employee by the Company.

As provided in the Plan, this Agreement and Appendix A, this Award may terminate before the end of the Performance Period. For example, if Employee’s employment ends before the end of the Performance Period, this Award will terminate at the same time as such termination unless an exception applies as set forth in Appendix A. Important additional information on vesting and forfeiture of the Performance Units covered by this Award is contained in Paragraphs 2 through 7 of Appendix A.

Your signature below indicates your agreement and understanding that this award is subject to all of the terms and conditions contained in Appendix A and the Plan. For example, important additional information on vesting and forfeiture of the Performance Units covered by this award is contained in Paragraphs 1 through 7 of Appendix A. PLEASE BE SURE TO READ ALL OF APPENDIX A, WHICH CONTAINS THE SPECIFIC TERMS AND CONDITIONS OF THIS AGREEMENT. YOU CAN REQUEST A COPY OF THE PLAN BY CONTACTING THE CORPORATE HUMAN RESOURCES OFFICE IN PALO ALTO, CALIFORNIA. TO THE EXTENT ANY CAPITALIZED TERMS USED IN APPENDIX A ARE NOT DEFINED HEREIN, THEY WILL HAVE THE MEANING ASCRIBED TO THEM IN THE PLAN.

VARIAN MEDICAL SYSTEMS, INC. 

EMPLOYEE

By:

Title: [NAME]

APPENDIX A

TERMS AND CONDITIONS OF PERFORMANCE UNITS

1. Award. The Company hereby awards to the Employee under the Plan as a separate incentive in connection with his or her employment, and not in lieu of any salary or other compensation for his or her services, an award of (Your Target Grant) Performance Units on the date hereof, subject to all of the terms and conditions in this Agreement and the Plan.

2. Vesting. To the extent that the Performance Goals are achieved and Shares are earned (which may range from zero to (Potential Maximum)), as determined and certified by the Committee in its sole discretion, then the earned Shares shall be paid following the end of the Performance Period no later than December 15th immediately following the end of the Performance Period (the “Settlement Date”) provided that Employee shall have been continuously employed by the Company or by one of its Affiliates from the Grant Date through the last day of the Performance Period (the “Employment Requirement”). For the avoidance of doubt, in the event that the
Employment Requirement is waived pursuant to Paragraph 3, 4 or 6, except as set forth in Paragraph 7, payout of the Performance Units shall continue to depend on the extent to which the Performance Goals are achieved and Shares are earned, as determined and certified by the Committee in its sole discretion.

3. **Retirement**. If Employee has a Termination of Service due to Retirement (defined as 55 years or more of age with 10 or more years of service with the Company or its Affiliates, or age 65 or older) on or prior to the last day of the Performance Period, Employee shall be treated for purposes of this Agreement as having been continuously employed by the Company or by one of its Affiliates through the last day of the Performance Period; provided, however, that the threshold, target and maximum number of Performance Units subject to this Agreement (and potential payouts in between) shall be adjusted proportionally by the time during the three (3) year Performance Period that the Employee remained an employee of the Company (based upon a 365 day year). For example, if the Employee is granted a target number of Performance Units equal to 6,000 and the Employee Terminated Service due to the Employee's Retirement 30 days after the Grant Date, then the Employee's target number of Performance Units would be reduced from 6,000 shares to 164 shares (6,000 x 30/1,095) and the balance of the Performance Units would be cancelled. For the avoidance of doubt, except as set forth in Paragraph 7, the actual number of Shares earned with respect to such adjusted number of Performance Units shall continue to depend on the extent to which the Performance Goals are achieved and Shares are earned, as determined and certified by the Committee in its sole discretion.

4. **Committee Discretion**. The Committee, in its absolute discretion, may waive the Employment Requirement with respect to all or any portion of the Performance Units at any time.

5. **Forfeiture**. Except as provided in Paragraphs 3, 4, 6 or 7(b) and notwithstanding any contrary provision of this Agreement, in the event that Employee ceases to be continuously employed by the Company or by one of its Affiliates through the last day of the Performance Period, the Performance Units shall thereupon be forfeited.

6. **Death of Employee**. In the event of the Employee's death prior to Employee's Termination of Service, Employee shall be treated for purposes of this Agreement as having been continuously employed by the Company or by one of its Affiliates through the last day of the Performance Period. Any distribution or delivery to be made to the Employee under this Agreement shall, if the Employee is then deceased, be made to the Employee’s designated beneficiary, or if either no beneficiary survives the Employee or the Committee does not permit beneficiary designations, to the administrator or executor of the Employee’s estate. Any designation of a beneficiary by the Employee shall be effective only if such designation is made in a form and manner acceptable to the Committee. Any transferee must furnish the Company with (a) written notice of his or her status as transferee, and (b) evidence satisfactory to the Company to establish the validity of the transfer and compliance with any laws or regulations pertaining to said transfer.

7. **Change in Control**.
   
   (a) In the event of a Change in Control (defined below) in which the Performance Units are assumed, the Performance Goals shall be deemed to be satisfied at target and the target number of Shares (as adjusted pursuant to Section 12 hereof) shall be paid to the Employee on the Settlement Date provided that Employee shall have been continuously employed by the Company or by one of its Affiliates from the Grant Date through the last day of the original Performance Period (or shall have had an earlier Termination of Service due to Retirement or death as described in the second to last sentence of this Section 7(a)). In the event Employee shall have had an earlier Termination of Service due to Retirement, such target number of Shares shall be prorated in accordance with Paragraph 3 hereof. If Employee has entered into a Change in Control Agreement (the “CIC Agreement”) with the Company on or prior to the date of the applicable Change in Control and the Employee’s employment terminates under the circumstances described in Section 2(d) or 4(a) of the CIC Agreement, then Employee shall become vested in the target number of Shares (as adjusted pursuant to Section 12 hereof, if applicable) upon the Release Deadline (as defined in the CIC Agreement) provided that Employee shall have executed and not revoked the Release (as defined in the CIC Agreement) by the Release Deadline and such Shares shall be paid to the Employee on the Settlement Date; provided, however, that if a Change in Control is not consummated, Employee shall return to the Company any payments provided to the Employee in connection with an employment termination described in Section 2(d) of the CIC Agreement. In the event of any conflict between this Agreement and CIC Agreement, this Agreement shall control.

   (b) Notwithstanding the foregoing or anything to the contrary set forth in the Plan or any other agreement or arrangement, in the event that the Performance Units are not assumed in connection with a Change in Control, the Performance Goals shall be deemed satisfied at target and the target number of Shares shall be paid to the Employee on the Settlement Date in the same form, and determined in accordance with the undiscounted value of, the consideration received by the holders of Shares in the Change in Control without the requirement that Employee shall have been continuously employed by the Company or by one of its Affiliates from the Grant Date through the last day of the original Performance Period and without the requirement that any portion of such payment be subject to any escrow, earn-out or similar provision.

For purposes of this Agreement, Change in Control shall mean the occurrence of any of the following:

   (i) Any individual or group constituting a “person”, as such term is used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended, (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 (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 Securities Exchange Act of 1934, as amended) 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) 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.

8. Settlement of Performance Units.
   (a) Status as a Creditor. Prior to settlement of any vested Performance Units, the Performance Units will represent an unfunded and unsecured obligation of the Company, payable (if at all) only from the general assets of the Company. The Employee is an unsecured general creditor of the Company, and settlement of vested Performance Units is subject to the claims of the Company’s creditors.

   (b) Form and Timing of Settlement. Performance Units will automatically be settled in the form of Shares on the Settlement Date to the extent earned in accordance with the terms hereof. Fractional Shares will not be issued with respect to Performance Units. Where a fractional Share would be owed to the Employee with respect to vested Performance Units, a cash payment equivalent will be paid in place of any such fractional Share using the Fair Market Value on the relevant Settlement Date.

9. Tax Liability and Withholding. The Company or one if its Affiliates shall assess applicable tax liability and requirements in connection with the Employee’s participation in the Plan, including, without limitation, tax liability associated with the grant or settlement of Performance Units or sale of the underlying Shares (the “Tax Liability”). These requirements may change from time to time as laws or interpretations change. Regardless of the Company’s or the Affiliate’s actions in this regard, the Employee hereby acknowledges and agrees that the Tax Liability shall be the Employee’s responsibility and liability. The Employee acknowledges that the Company’s obligation to issue or deliver Shares shall be subject to satisfaction of the Tax Liability. Unless otherwise determined by the Company, Tax Liability shall be satisfied by the Company’s withholding all or a portion of any Shares that otherwise would be issued to the Employee upon settlement of the vested Performance Units; provided that amounts withheld shall not exceed the amount necessary to satisfy the Company’s tax withholding obligations (minimum tax withholding obligations if necessary to avoid adverse accounting consequences). Such withheld Shares shall be valued based on the Fair Market Value as of the date the withholding obligations are satisfied. The Company or one if its Affiliates may, at their discretion, use other methods to satisfy the Tax Liability. Furthermore, the Employee agrees to pay the Company or the Affiliate any Tax Liability that cannot be satisfied by the foregoing methods.

10. Rights as Stockholder. Neither the Employee nor any person claiming under or through the Employee shall have any of the rights or privileges of a stockholder of the Company in respect of any Performance Units (whether vested or unvested) unless and until such Performance Units are settled in Shares and certificates representing such Shares shall have been issued, recorded on the records of the Company or its transfer agents or registrars, and delivered to the Employee. After such issuance, recordation and delivery, the Employee shall have all the rights of a stockholder of the Company with respect to voting such Shares and receipt of dividends and distributions on such Shares. This Agreement does not provide for dividend equivalents.

11. Acknowledgments. The Employee acknowledges and agrees to the following:

• The Plan is discretionary in nature and the Committee may amend, suspend, or terminate it at any time;

• The grant of the Performance Units is voluntary and occasional and does not create any contractual or other right to receive future grants of Performance Units, or benefits in lieu of the Performance Units even if the Performance Units have been granted repeatedly in the past;

• All determinations with respect to such future Performance Units, if any, including but not limited to, the times when the
Performance Units shall be granted or when the Performance Units shall vest, will be at the sole discretion of the Committee;

- The Employee’s participation in the Plan is voluntary;

- The value of the Performance Units is an extraordinary item of compensation, which is outside the scope of the Employee’s employment contract (if any), except as may otherwise be explicitly provided in the Employee’s employment contract (if any);

- The Performance Units are not part of normal or expected compensation or salary for any purpose, including, but not limited to, calculating termination, severance, resignation, redundancy, end of service, or similar payments, or bonuses, long-service awards, pension or retirement benefits;

- The future value of the Shares is unknown and cannot be predicted with certainty;

- No claim or entitlement to compensation or damages arises from the termination of the Award or diminution in value of the Performance Units or Shares, and the Employee irrevocably releases the Company and its Affiliates from any such claim that may arise;

- Neither the Plan nor the Performance Units shall be construed to create an employment relationship where any employment relationship did not otherwise already exist;

- Nothing in this Agreement or the Plan shall confer upon the Employee any right to continue to be employed by the Company or any Affiliate or shall interfere with or restrict in any way the rights of the Company or the Affiliate, which are hereby expressly reserved, to terminate the employment of the Employee under applicable law;

- The transfer of employment of the Employee between the Company and any one of its Affiliates (or between Affiliates) shall not be deemed a Termination of Service;

- Nothing herein contained shall affect the Employee’s right to participate in and receive benefits under and in accordance with the then current provisions of any pension, insurance or other employee welfare plan or program of the Company or any Affiliate.

13. **Address for Notices.** Any notice to be given to the Company under the terms of this Agreement shall be addressed to the Company, in care of its Secretary, at 3100 Hansen Way, Palo Alto, California 94304, or at such other address as the Company may hereafter designate in writing.

14. **Restrictions on Transfer.** Except as provided in Paragraph 6 above, this award and the rights and privileges conferred hereby shall not be transferred, assigned, pledged or hypothecated in any way (whether by operation of law or otherwise) and shall not be subject to sale under execution, attachment or similar process. Upon any attempt to transfer, assign, pledge, hypothecate or otherwise dispose of this award, or of any right or privilege conferred hereby, or upon any attempted sale under any execution, attachment or similar process, this award and the rights and privileges conferred hereby immediately shall become null and void. Regardless of whether the transfer or issuance of the Shares to be issued pursuant to this Agreement has been registered under the Securities Act of 1933, as amended (the "1933 Act") or has been registered or qualified under the securities laws of any state, the Company may impose additional restrictions upon the sale, pledge, or other transfer of the Shares (including the placement of appropriate legends on stock certificates and the issuance of stop-transfer instructions to the Company’s transfer agent) if, in the judgment of the Company and the Company’s counsel, such restrictions are necessary in order to achieve compliance with the provisions of the 1933 Act, the securities laws of any state, or any other law. Stock certificates evidencing the Shares issued pursuant to this Agreement, if any, may bear such restrictive legends as the Company and the Company’s counsel deem necessary under applicable laws or pursuant to this Agreement.

15. **Binding Agreement.** Subject to the limitation on the transferability of this award contained herein, this Agreement shall be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

16. **Conditions for Issuance of Certificates for Stock.** The Shares deliverable to the Employee upon settlement of vested Performance Units may be either previously authorized but unissued Shares or issued Shares which have been reacquired by the Company. Subject to Section 409A of the Code, the Company shall not be required to issue any certificate or certificates for Shares hereunder prior to fulfillment of all the following conditions: (a) the admission of such Shares to listing on all stock exchanges on which such class of stock is then listed; (b) the completion of any registration or other qualification of such Shares under any state or federal law or under the rulings or regulations of the Securities and Exchange Commission or any other governmental regulatory body, which the Committee shall, in its absolute discretion, deem necessary or advisable; (c) the approval or other clearance from any state or federal governmental regulatory body, which the Committee shall, in its absolute discretion, determine to be necessary or advisable; and (d) the lapse of such reasonable period of time following the Settlement Date as the Committee may establish from time to time for reasons of administrative convenience.
17. **Plan Governs.** This Agreement is subject to all terms and provisions of the Plan. In the event of a conflict between one or more provisions of this Agreement and one or more provisions of the Plan, the provisions of the Plan shall govern.

18. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to its principles of conflicts of law.

19. **Committee Authority.** The Committee shall have the power to interpret the Plan and this Agreement, and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret or revoke any such rules. All actions taken and all interpretations and determinations made by the Committee in good faith shall be final and binding upon the Employee, the Company and all other interested persons. No member of the Committee shall be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or this Agreement. In its absolute discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Committee under the Plan and this Agreement.

20. **Captions.** Captions provided herein are for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

21. **Severability.** In the event that any provision in this Agreement shall be held invalid or unenforceable, such provision shall be severable from, and such invalidity or unenforceability shall not be construed to have any effect on, the remaining provisions of this Agreement.

22. **Modifications to the Agreement.** This Agreement constitutes the entire understanding of the parties on the subjects covered. The Employee expressly warrants that he or she is not executing this Agreement in reliance on any promises, representations, or inducements other than those contained herein. Modifications to this Agreement or the Plan can be made only in an express written contract executed by a duly authorized officer of the Company.

23. **Amendment, Suspension or Termination of the Plan.** By accepting this award, the Employee expressly warrants that he or she has received a right to an equity based award under the Plan, and has received, read, and understood a description of the Plan. The Employee understands that the Plan is discretionary in nature and may be modified, suspended, or terminated by the Company at any time.

24. **Authorization to Release and Transfer Necessary Personal Information.** The Employee hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of his or her personal data by and among, as applicable, the Company and the Affiliates for the exclusive purpose of implementing, administering and managing the Employee’s participation in the Plan. The Employee understands that the Company and the Affiliates may hold certain personal information about the Employee including, but not limited to, the Employee’s name, home address and telephone number, date of birth, social security number (or any other social or national identification number), salary, nationality, job title, number of Shares held and the details of all Performance Units or any other entitlement to Shares awarded, cancelled, vested, unvested or outstanding for the purpose of implementing, administering and managing the Employee’s participation in the Plan (the “Data”). The Employee understands that the Data may be transferred to the Company or any of the Affiliates, or to any third parties assisting in the implementation, administration and management of the Plan, that these recipients may be located in the Employee’s country or elsewhere, and that the recipients’ country may have different data privacy laws and protections than the Employee’s country. The Employee understands that he or she may request a list with the names and addresses of any potential recipients of the Data by contacting his or her local human resources representative. The Employee authorizes the recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, for the sole purpose of implementing, administering and managing his or her participation in the Plan, including any requisite transfer of such Data to a broker or other third party assisting with the administration of Performance Units under the Plan or with whom Shares acquired pursuant to the Performance Units or cash from the sale of such Shares may be deposited. Furthermore, the Employee acknowledges and understands that the transfer of the Data to the Company or the Affiliates or to any third parties is necessary for his or her participation in the Plan. The Employee understands that Data will be held only as long as is necessary to implement, administer and manage his or her participation in the Plan. The Employee understands that he or she may, at any time, view the Data, request additional information about the storage and processing of the Data, require any necessary amendments to the Data or refuse or withdraw the consents herein by contacting his or her local human resources representative in writing. The Employee further acknowledges that withdrawal of consent may affect his or her ability to vest in or realize benefits from the Performance Units, and his or her ability to participate in the Plan. For more information on the consequences of refusal to consent or withdrawal of consent, the Employee understands that he or she may contact his or her local human resources representative.

25. **Electronic Delivery:** By executing this Agreement Employee consents to the electronic delivery of the Plan documents and this Agreement.

26. **Execution of this Agreement:** Execution of this Agreement, whether in writing or electronic, shall have the same binding effect and shall fully bind Employee and the Company to all of the terms and conditions set forth in this Agreement and the Plan.
FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT
AND OTHER LOAN DOCUMENTS

THIS FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT AND OTHER LOAN DOCUMENTS (this “Amendment”) is entered into as of October 25, 2013 (the “Effective Date”), among ORIX CAPITAL MARKETS, LLC, a Delaware limited liability company, in its capacity as agent for Lenders (“Agent”) on behalf of Lenders (as hereinafter defined), CALIFORNIA PROTON TREATMENT CENTER, LLC, a Delaware limited liability company (“Borrower”) and JEFFREY L. BORDOK and JAMES THOMSON (collectively, “Guarantors”).

RECITALS:

A. Borrower, Lenders, Orex Capital Markets LLC, a Delaware limited liability company and Varian Medical Systems International, Inc., a Swiss corporation (collectively, “Lenders”) and Agent have entered into that certain Loan and Security Agreement dated as of September 30, 2011 (the “Loan Agreement”), pursuant to which Lenders agreed to make the loan described therein (the “Loan”) to Borrowers for the purpose of developing and constructing the Project.

B. Borrower and Provider have determined that due to the scheduling of the opening of the Facility, there is no longer a need for the Pre-Opening Expenses Escrow Account and that the funds that were to be deposited in the Pre-Opening Expenses Escrow Account should instead be deposited in the Operating Deficit Escrow Account.

C. Borrower has requested that Lenders and Agent modify certain of the terms of the Loan Agreement to facilitate the combination of the Pre-Opening Expenses Escrow Account and the Operating Deficit Escrow Account, and Lenders and Agent have agreed to such request, subject to the terms and conditions of this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent, on behalf of itself and Lenders, Borrower and Guarantors hereby agree as follows:

1. Defined Terms. Capitalized terms used but not otherwise defined in this Amendment shall have the meanings ascribed to them in the Loan Agreement (as modified hereby). Additional terms defined herein are incorporated into the Loan Agreement.

2. Recitals. All of the Recitals stated above are true and accurate and by this reference are incorporated into and made a part of the body of this Amendment.

3. Reallocation and Modifications of Escrow Accounts. As a result of the anticipated overlap of the need for the Operating Deficit Escrow Funds and Pre-Opening Escrow Funds (as such terms are defined in the Facility Lease), Borrower and Provider have agreed to certain modifications to the Facility Lease with respect to the Operating Deficit Escrow Account, Operating Deficit Escrow Funds, the Pre-Opening Escrow Account and Pre-Opening Escrow Funds (as such terms are defined in the Facility Lease). Specifically, Borrower and Provider have agreed to eliminate the requirement to establish the Pre-Opening Escrow Account and deposit the Pre-Opening Escrow Funds therein, and to require only that Borrower establish and fund the Operating Deficit Account (the “Facility Lease Modification”). The Operating Deficit Escrow Funds will be used to fund both operating deficits incurred during the Ramp Up Period (as defined in the Facility Lease) in accordance with the terms of the Facility Lease and Budgeted Pre-Opening Expenses (as defined in the Facility Lease). Agent and Lenders hereby consent to the Facility Lease Modification as described herein and as evidenced by that certain First Amendment to Lease and Management Services Agreement dated of even date herewith between Provider and Borrower, a copy of which has been provided to Agent and Lenders.

Accordingly, to reflect the changes made pursuant to the Facility Lease Modification, the following modifications are made to the Loan Agreement:

(a) Section 1.1.4(i) of the Loan Agreement is deleted in its entirety and the following inserted in lieu thereof:

“(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 Project Working Capital Holdback, the Real Estate Tax Holdback and the Working Capital Holdback, each a “Holdback”.

(b) Section 1.1.4(t) of the Loan Agreement is deleted in its entirety and the following inserted in lieu thereof:

“(t) “Operating Deficit Holdback” means: A holdback from the proceeds of the Loan in the amount of $9,213,406.”
(c) Section 1.1.4(u) of the Loan Agreement is deleted in its entirety.

(d) The first paragraph (unlettered) of Section 2.2.2 is deleted in its entirety and the following inserted in lieu thereof:

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, if any, may, at Borrower’s written request, be allocated to the Working Capital Holdback.

(f) Section 2.2.2(g) of the Loan Agreement is deleted in its entirety.

(g) Section 2.5.2 of the Loan Agreement is deleted in its entirety and the following inserted in lieu thereof:

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 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 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, of the date such Escrow Account is to be funded 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 and (ii) 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 and (2) 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 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 reasonably 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; and

(b) 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.

4. **Reallocation of Project Budget.** Borrower and Agent acknowledge and agree the current allocations under the Project Budget are set forth on Exhibit A attached hereto, which have been previously approved by Agent on behalf of Lenders. Any reallocation of the Project Budget and/or any Holdback amounts after the Effective Date shall be done so only in accordance with the terms and provisions of the Loan Agreement.

5. **Ratification by Borrower.** Borrower hereby (a) renews, ratifies and confirms the indebtedness evidenced by the Note and the other Loan Documents, as modified hereby; (b) acknowledges that the liens and security interests created and evidenced by the Mortgages and other Loan Documents are valid, subsisting and enforceable in accordance with their terms, as modified hereby; (c) acknowledges and agrees that, as of the Effective Date, Borrower has no offsets, claims, counterclaims or defenses to the indebtedness evidenced by the Notes and the other Loan Documents, as modified hereby, or otherwise with respect to the Loan or the Loan Documents; (d) acknowledges and agrees that Borrowers are, and shall remain, liable for the prompt and timely payment and performance of the indebtedness evidenced by the Notes and the other Loan Documents, as modified hereby; (e) agrees that the Loan Documents are and remain in full force and effect, except as expressly modified hereby, and that the Loan Documents continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective 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); and (f) represents and warrants that, after giving effect to the terms and conditions of this Amendment (i) there are no uncured Events of Default under the Loan Documents and no event, condition or state of facts exists or has occurred and remains uncured that, with the giving of notice or passage of time or both, would constitute an Event of Default under the Loan Documents, (ii) the representation and warranties in the Loan Agreement and the other Loan Documents are true and correct as of the date hereof, (iii) there has been no material adverse change in the financial condition of Borrower, Guarantors or any other party whose financial statement has been delivered to Agent in connection with the Loan from the date of the most recent financial statement received by Agent, (iv) Borrower is validly existing under the laws of the State of Delaware, has the requisite power and authority to execute and deliver this Amendment, the execution and delivery of this Amendment has been duly authorized by all requisite action by or on behalf of Borrower and this Amendment has been duly executed and delivered on behalf of Borrower.

6. **Reaffirmation of Guarantor Documents.** Guarantors hereby ratify and affirm the Guaranty and Environmental Indemnity (collectively, the “Guarantor Documents”), and consent to and acknowledge this Amendment and reaffirm and acknowledge their liability to Lenders under the Guarantor Documents subject to their terms and conditions thereof and agree that the duties, liabilities and obligations under the Guarantor Documents shall not in any manner be impaired, discharged or released by this Amendment. Guarantors hereby represent and warrant that (i) the representations and warranties of Guarantors contained in the
Guarantor Documents are, as of the Effective Date, true and correct and Guarantors do not know of any default thereunder, and (ii) each of the Guarantor Documents continues to be the valid and binding obligations of Guarantors, enforceable in accordance with their respective terms and Guarantors have no offsets, claims, counterclaims or defenses to the enforcement of the rights and remedies of Lenders thereunder.

7. **Modification of other Loan Documents.** All references in the other Loan Documents to the (a) “Loan” shall refer to Loan, as amended by this Amendment and (b) “Loan Agreement” shall mean the Loan Agreement as modified hereby.

8. **Continued Validity.** Except as expressly provided in this Amendment, all terms, conditions, representations, warranties, and covenants contained in the Loan Agreement and the other Loan Documents shall remain in full force and effect, and are hereby ratified, confirmed and acknowledged by Borrower and Guarantors.

9. **Representations and Warranties.** Borrower hereby represents and warrants to Agent and Lenders that the execution, delivery and performance of this Amendment (i) have been authorized by all requisite corporate, partnership, limited liability company and trust action and (ii) do not and will not violate or conflict with, result in a breach of or require any consent under the articles or certificate of incorporation, bylaws, partnership agreement, trust agreement or other organizational documents of Borrower, any applicable laws or any material agreement binding on Borrower or any of its property.

10. **No Waiver, etc.** This Amendment does not affect or limit Agent's and/or any Lenders’ rights or remedies in any way with respect to any existing or future act or omission (including any breach of the terms of this Amendment by Borrower) that may constitute a default by Borrower, or with respect to any Default or Event of Default resulting from prior or future acts or omissions by Borrower. This Amendment does not, and shall not be construed to, create any obligation by Agent, Lenders, or any of them, to forbear from any Default or Event of Default that may exist now or in the future under the Loan Agreement or the other Loan Documents. Agent expressly reserves, on behalf of itself and Lenders, all of, and does not modify or waive in any way any of, their rights and remedies under the Loan Agreement, the other Loan Documents, applicable law or otherwise and Agent, on behalf of itself and on behalf of Lenders, hereby reserves all of their rights and remedies under all of the Loan Documents and applicable law.

11. **Fees and Expenses.** Borrower agrees to pay all reasonable fees and expenses incurred by Agent and Lenders in connection with the negotiation of this Amendment, and the transactions contemplated hereby, including, without limitation, fees and costs of third-party consultants, accountants or professionals retained by Agent and Lenders and reasonable attorneys’ fees and expenses.

12. **Construction.** This Amendment and the rights and obligations of the parties hereunder shall be construed and interpreted in accordance with and governed by, the laws of the State of New York and any applicable laws of the United States of America.

13. **Binding Effect.** This Amendment shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns; provided, however, that Borrower shall not assign or transfer its rights or obligations hereunder without the prior written consent of the Agent and Lenders.

14. **Counterparts.** This Amendment may be executed in several counterparts, each of which shall be fully effective as an original, and all of which together shall constitute one and the same instrument.

15. **NO ORAL AGREEMENTS. THIS AMENDMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

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**BORROWER:**

**CALIFORNIA PROTON TREATMENT CENTER, LLC**, a Delaware limited liability company

By: /s/ Jeffrey L. Bordok  
Name: Jeffrey L. Bordok  
Title: Manager
AGENT, on behalf of itself and the Lenders:

ORIX CAPITAL MARKETS, LLC, a Delaware limited liability company

By: /s/ Jim Dunn
Name: Jim Dunn
Title: Vice President

GUARANTORS:

/s/ Jeffrey L. Bordok
JEFFREY L. BORDOK

/s/ James Thomson
JAMES THOMSON
RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:
FisherBroyles, LLP
345 North Canal Street
Suite C202
Chicago, Illinois 60606
Attention: Michael E. Mermall, Esq.

SECOND AMENDMENT TO LOAN AND SECURITY AGREEMENT
AND OTHER LOAN DOCUMENTS

THIS SECOND AMENDMENT TO LOAN AND SECURITY AGREEMENT AND OTHER LOAN DOCUMENTS (this “Amendment”) is made effective as of June 10, 2014 (the “Effective Date”), among ORIX CAPITAL MARKETS, LLC, a Delaware limited liability company, in its capacity as agent (“Agent”), on behalf of Lenders (as hereinafter defined), ORIX CAPITAL MARKETS, LLC, a Delaware limited liability company (“ORIX”), VARIAN MEDICAL SYSTEMS INTERNATIONAL AG, a Swiss corporation (“Varian”) (ORIX and Varian are collectively referred to herein as “Lenders”), CALIFORNIA PROTON TREATMENT CENTER, LLC, a Delaware limited liability company (“Borrower”), and JEFFREY L. BORDOK and JAMES THOMSON (collectively, “Guarantors”).

RECITALS:

A. Borrower, Lenders and Agent have entered into that certain Loan and Security Agreement dated as of September 30, 2011 (the “Original Loan Agreement”), as amended by that certain First Amendment to Loan and Security Agreement and Other Loan Documents dated October 25, 2013 (the “First Amendment”) pursuant to which Lenders agreed to make the loan described therein (the “Loan”) to Borrower for the purpose of developing and constructing the Project (the Original Loan Agreement, as amended by the First Amendment, is hereinafter referred to as the “Loan Agreement”).

B. The Loan is secured by (i) a Deed of Trust, With Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “Fee Deed of Trust”) dated as of September 30, 2011, executed by Borrower for the benefit of Agent and Lenders and recorded on October 6, 2011, with the Recorder of Deeds of San Diego County (“Public Office”) as Document No. 2011-0523668, which Fee Deed of Trust encumbers the real property legally described on attached Exhibit A (the “Premises”); (ii) a Leaseload Deed of Trust, With Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “Leaseload Deed of Trust”) dated as of September 30, 2011, executed by Borrower for the benefit of Agent and Lenders and recorded on October 6, 2011, with the Public Office as Document No. 2011-0523669, which Leaseload Deed of Trust encumbers the Premises; (iii) a Guaranty dated as of September 30, 2011, executed by Guarantors in favor of Agent and Lenders (“Guaranty”); (iv) a Guaranty of Completion dated as of September 30, 2011, executed by Guarantors in favor of Agent and Lenders (“Guaranty of Completion”); (v) an Unsecured Environmental Indemnity Agreement dated as of September 30, 2011, executed by Borrower and Guarantors in favor of Agent and Lenders (“Environmental Indemnity”), and (vi) certain other loan documents (the Note, Fee Deed of Trust, Leaseload Deed of Trust, Guaranty, Guaranty of Completion, Environmental Indemnity, Loan Agreement and other documents evidencing, securing or guarantying the Loan, in their original form and as amended from time to time, are sometimes collectively referred to herein as the “Loan Documents”).

C. Borrower has requested that Lenders and Agent modify certain of the terms of the Loan, and Lenders and Agent have agreed to such request, subject to the terms and conditions of this Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent, Lenders, Borrower and Guarantors hereby agree as follows:

1. Defined Terms. Capitalized terms used but not otherwise defined in this Amendment shall have the meanings ascribed to them in the Loan Agreement (as modified hereby). Additional terms defined herein are incorporated into the Loan Agreement.

2. Recitals. All of the Recitals stated above are true and accurate and by this reference are incorporated into and made a part of the body of this Amendment.
3. Maturity Date and Extension Options. The Maturity Date as defined in Section 1.1.4(p) of the Loan Agreement is hereby extended to September 30, 2017, and as used in the Loan Documents, the term “Maturity Date” shall be deemed to mean the Maturity Date as extended as set forth in this Section 3. Rider 1.1.4 of the Loan Agreement, and the definitions of Extension Notice, Extension Option and Extension Term contained therein, are hereby deleted in their entirety and are of no further force or effect. Notwithstanding the foregoing and in consideration for Lenders agreement to extend the Maturity Date as aforesaid, Borrower shall pay to Agent, for the ratable benefit of Lenders, (i) on or before June 1, 2015, a fee equal to seventy five one-hundredths of one percent (0.75%) of the then outstanding principal balance of the Loan, and (ii) on or before June 1, 2016, a fee equal to seventy five one-hundredths of one percent (0.75%) of the then outstanding principal balance of the Loan.

4. Amortization.

(a) The Amortization Commencement Date as defined in Section 1.1.4(a) of the Loan Agreement is hereby amended to mean January 1, 2015, and as used in the Loan Documents, the term “Amortization Commencement Date” shall be deemed to mean the Amortization Commencement Date as amended as set forth in this Section 4.

(b) Section 2.3.1(b) of the Loan Agreement is hereby deleted in its entirety and is replaced with the following:

“(b) Borrower shall pay to Agent, for the ratable benefit of Lenders, the Amortization Conversion Fee on or before June 17, 2014.”

5. Interest Rate. The first sentence of Section 1.1.4(m) of the Loan Agreement is hereby deleted in its entirety and is replaced with the following:

“(m) “Interest Rate” means: A per annum rate equal to LIBOR plus 700 Basis Points; provided at no time shall the Interest Rate ever be less than nine percent (9.00%) per annum.”

6. Cash Trap Events. The Cash Trap Events set forth in subparagraphs (r), (s) and (t) of Exhibit E to the Closing Certificate of Borrower are hereby deleted in their entirety and are replaced with the following:

“(r) the failure to perform at least 14,520 fractions at the Facility prior to December 1, 2014, provided that if at least 14,520 fractions have been performed at the Facility prior to March 1, 2015, then any such Cash Trap Event arising from this subparagraph (r) shall be deemed discontinued;

(s) commencing July 1, 2015 and ending June 30, 2016, as of the end of the period covered by the quarterly financial statements which are to be provided to Agent pursuant to Section 5.1.1 of the Loan Agreement during such period, the failure of (i) the annualized Net Operating Income for the immediately preceding six (6) month period to equal or exceed the product obtained by multiplying the Debt Service by 1.50 or (ii) the Project Yield (calculated using the annualized Net Operating Income for the immediately preceding six (6) month period) to equal or exceed 20%, provided that if the performance standards set forth in this subparagraph (s) are thereafter satisfied for two (2) consecutive calendar quarters, then any Cash Trap Event arising from any matter described in this subparagraph (s) shall be deemed discontinued; or

(t) commencing July 1, 2016 and continuing thereafter, as of the end of the period covered by the quarterly financial statements which are to be provided to Agent pursuant to Section 5.1.1 of the Loan Agreement during such period, the failure of (i) the annualized Net Operating Income for the immediately preceding six (6) month period to equal or exceed the product obtained by multiplying the Debt Service by 2.00 or (ii) the Project Yield (calculated using the annualized Net Operating Income for the immediately preceding six (6) month period) to equal or exceed 25%, provided that if the performance standards set forth in this subparagraph (t) are thereafter satisfied for two (2) consecutive calendar quarters, then any Cash Trap Event arising from any matter described in this subparagraph (t) shall be deemed discontinued.”

7. Milestone Events and Dates.

(a) Exhibit D to the Closing Certificate of Borrower is hereby amended by extending the May 15, 2014 date in the last row of the table contained therein to July 31, 2014.

(b) Section 7.1(h) of the Loan Agreement is hereby amended by extending the May 15, 2014 date contained therein to July 31, 2014.

8. Required Lenders.

(a) The definition of “Required Lenders” as set forth in Schedule 1.2 of the Loan Agreement is hereby deleted in its
entirety and is replaced with the following:

“Required Lenders” means, at any time, those Non-Delinquent Lenders holding at least seventy two percent (72%) of that portion of the aggregate outstanding principal amount of the Notes held by the Non-Delinquent Lenders.”

(b) The first sentence of the third paragraph of Section 9.16 of the Loan Agreement is hereby deleted in its entirety and is replaced with the following:

“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), but consistent with any written instructions theretofore or thereafter given by the Required Lenders to Agent that does not constitute a Major Decision (unless the direction or consent of all Lenders is obtained), to preserve and protect the Collateral until such time as all Lenders have reached agreement with respect to any Major Decisions.”

(c) The first and second sentences of Section 10.1(b) of the Loan Agreement are hereby deleted in their entirety and are replaced with the following:

“(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 right, powers or discretion, except (i) with respect to Major Decision, only in accordance with directions from all Lenders, and (ii) in all other events, in accordance with directions from the Required 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 circumstance shall be obligated), in Agent’s sole and absolute discretion, to take any action (including, without limitation those acts describe on Rider 10.1(b) attached hereto and made a part hereof) or refrain from taking any action, except that (i) 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, and (ii) in all other events, Agent shall take, or refrain from taking, actions consistent with directions from the Required Lenders.”

9. Loan Transfers. The first sentence of the second grammatical paragraph of Section 9.8(c) of the Loan Agreement is hereby deleted its entirety and is replaced with the following:

“Notwithstanding anything contained in this Agreement to the contrary, ORIX Capital Markets, LLC, a Delaware limited liability company (“ORIX”), as Lender and not Agent, shall have the right, at its sole option, to cause Varian Medical Systems International AG, a Swiss corporation (“Varian”) (but expressly excluding any successor, assign or participant of Varian or any other Person other than 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).”

10. Minimum Interest Lookback.
(a) The definition of “Minimum Interest Lookback Amount” as set forth in Section 1.1.4(r) of the Loan Agreement is hereby deleted in its entirety and is replaced with the following:

“Minimum Interest Lookback Amount” means: (A) if a portion of the Loan Amount is prepaid on or before October 1, 2016, an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on that portion of the Loan Amount so prepaid, after subtracting from such prepaid amount that portion of the Loan Amount that Varian, but not any successor, assign or participant of Varian or any other Person other than Varian, is entitled to receive pursuant to the Loan Documents (such subtracted amount is referred to herein as the “Excluded Share”), from the Closing Date through and including October 1, 2016 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 that portion of the Loan Amount so prepaid, calculated after subtracting the Excluded Share from such prepaid amount, and (B) if the Loan is prepaid in full on or before October 1, 2016, an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the Loan Amount, calculated after subtracting the Excluded Share from the Loan Amount, from the Closing Date through and including October 1, 2016 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 the actual amount of interest paid to Varian with respect to the Excluded Share, 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.”

(b) Section 2.3.1 of the Loan Agreement is hereby amended by the addition of the following subsection after subsection (f) thereof:

“(g) Notwithstanding anything contained in this Agreement or any of the other Loan Documents to the contrary, that portion of any Minimum Interest Lookback Amount (but not any Excluded Share) paid by Borrower that would otherwise be paid to Varian under the Loan Documents (but not those amounts that would be paid to any successor, assign or participant of Varian) shall be paid to the other Lenders (including successors, assigns and participants of Varian) on a ratable basis, as determined by Agent.”

11. The Loan; Notes.

(a) The definition of “Loan” as set forth in Schedule 1.2 of the Loan Agreement is hereby deleted in its entirety and is replaced with the following:

““Loan” means the loan made pursuant to this Agreement, consisting of two tranches. The first tranche is in the amount of $165,300,000 (“Tranche A”) and the second tranche is in the amount of $10,000,000 (“Tranche B”). Unless otherwise provided herein, the term “Loan” shall mean and include both Tranche A and Tranche B.”

(b) The definition of “Notes,” as set forth in Schedule 1.2 of the Loan Agreement is hereby deleted in its entirety and is replaced with the following:

““Notes” means (i) the promissory notes made by Borrower dated as of September 30, 2011 (the “Tranche A Notes”), one for each Lender payable for the account of such Lender, and (ii) the promissory note dated as of June 10, 2014 made by Borrower and payable to Varian in the original principal amount of $10,000,000 (the “Tranche B Note”); 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”).”

12. Loan Amount; Individual Loan Commitment; Pro Rata Share.

(a) The definition of “Loan Amount” as set forth in Section 1.1.4(n) of the Loan Agreement is hereby amended to mean $175,300,000.

(b) The definition of “Individual Loan Commitment” as set forth in Schedule 1.2 of the Loan Agreement is hereby amended so that Varian’s Individual Loan Commitment is increased from $115,300,000 to $125,300,000, $115,300,000 of which is allocated to Tranche A and $10,000,000 of which is allocated to Tranche B. All of ORIX’s Individual Loan Commitment is allocated to Tranche A.

(c) The definition of “Pro Rata Share” as set forth in Schedule 1.2 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

““Pro Rata Share,” “Tranche A Pro Rata Share” and “Tranche B Pro Rata Share” mean, respectively, at any particular time with respect to each Lender, (i) the ratio of such Lender’s outstanding Individual Loan Commitment to the Loan Amount, (ii) the ratio of such Lender’s Individual Loan Commitment allocated to Tranche A to Tranche A, and (iii) the ratio of such Lender’s Individual Loan Commitment allocated to Tranche B to Tranche B, 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, each Lender’s respective Pro Rata Share, Tranche A Pro Rata Share and Tranche B Pro Rata Share are as follows:

<table>
<thead>
<tr>
<th>Lender</th>
<th>Pro Rata Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>ORIX Capital Markets, LLC</td>
<td>28.52253%</td>
</tr>
<tr>
<td>Varian Medical Systems</td>
<td>71.47747%</td>
</tr>
<tr>
<td>International AG</td>
<td></td>
</tr>
</tbody>
</table>
Tranche A Pro Rata Share: 30.25000% 69.75000%

Tranche B Pro Rata Share: 0.00000% 100.00000%

(d) The phrase “Pro Rata Share” in Sections 2.2.1, 3.1.22, and the last grammatical paragraph of Section 3.1 of the Loan Agreement, is hereby deleted and replaced with “Tranche A Pro Rata Share.”

(e) Section 3.2.1(g) of the Loan Agreement is hereby deleted in its entirety and is replaced with the following:

“(g) Agent shall have received from each Lender such Lender’s Pro Rata Share or Tranche B Pro Rata Share, as applicable, of each such Advance.”

(f) Each incidence of the phrase “Pro Rata Share” in Sections 3.2.6 and 10.12(a) of the Loan Agreement is hereby deleted and replaced with “Pro Rata Share or Tranche B Pro Rata Share, as applicable,”

(g) The second sentence of Section 10.16(c) of the Loan Agreement hereby deleted in its entirety and is replaced with the following:

“(c) 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 Tranche A Pro Rata Share of all Indebtedness allocated to Tranche A and their respective Tranche B Pro Rata Share of all Indebtedness allocated to Tranche B (in the order of priority as set forth in Section 2.3.2(b)), 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 Tranche A Notes of the Non-Delinquent Lenders until the entire outstanding principal balance of the Tranche A Notes of the Non-Delinquent Lenders has been paid in full; next, all remaining sums which constitute a payment of principal under the Loan shall be treated as a repayment of principal under the Tranche B Note of the Non-Delinquent Lenders until the entire outstanding principal balance of the Tranche B Note of the Non-Delinquent Lenders has been paid in full; 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.”

(h) Section 2.3.2(d) of the Loan Agreement is hereby amended by the addition of the following as the last sentence thereof:

“Notwithstanding anything in this Agreement to the contrary, commencing June 10, 2014, each advance of proceeds of the Loan shall be made and allocated as follows: (i) first, in accordance with each Lender’s Tranche B Pro Rata Share, until $8,461,250.00 in the aggregate shall have been Advanced, which amount shall be allocated to Tranche B and funded under the Tranche B Note; and (ii) next, in accordance with each Lender’s Pro Rata Share, which shall be allocated as follows: (a) all amounts Advanced by ORIX shall be allocated to Tranche A and funded under ORIX’s Tranche A Note, and (b) 92% of all amounts Advanced by Varian shall be allocated to Tranche A and funded under Varian’s Tranche A Note and 8% of all amounts Advanced by Varian shall be allocated to Tranche B and funded under Varian’s Tranche B Note.”

13. **Priority and Application of Payments**.

(a) The first sentence of Section 2.3.2(b) of the Loan Agreement is hereby deleted in its entirety and is replaced with the following:

“Subject to the terms and conditions of Section 2.3.2(c), 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 Tranche A Pro Rata Share of the payments of principal and interest made on the Tranche A Notes, such Lender’s Tranche B Pro Rata Share of the payments of principal and interest made on the Tranche B Note, 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, Tranche A Pro Rata Share or Tranche B Pro Rata Share, as applicable, 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.”

(b) Section 2.3.2(c) of the Loan Agreement is hereby deleted in its entirety and is replaced with the following:

“(c) Except as provided in Section 10.16., (i) provided that no Event of Default exists, payments made on the Loan will be applied first to any unpaid Charges, second, proportionally, to the aggregate interest due on the Tranche A Notes, third, proportionally, to the interest due on the Tranche B Note, fourth, proportionally, to the aggregate outstanding principal balance of the Tranche A Notes and the Tranche B Note, and fifth to the Minimum Interest Lookback Amount (if any) and the Exit Fee (if any), and (ii) so long as an Event of Default remains outstanding, payments made on the Loan will be applied first to any unpaid Charges, second to the aggregate interest due on the Tranche A Notes, third to the aggregate outstanding principal balance of the Tranche A Notes, fourth, to the interest due on the Tranche B Note, fifth to the outstanding principal balance of the Tranche B Note, and sixth to the Minimum Interest Lookback Amount (if any) and the Exit Fee (if any). The foregoing notwithstanding, provided that no Event of Default exists, all principal payments other than required amortization payments hereunder will be applied first, proportionally, to the outstanding principal balance of the Tranche A Notes until paid in full, and then to the outstanding principal amount of the Tranche B Note.”

14. Removal of Agent. Section 10.8 of the Loan Agreement is hereby amended by the addition of the following as the last sentence thereof:

“Notwithstanding anything in this Section 10.8 to the contrary, in the event the combined Individual Loan Commitments of Agent, in its capacity as a Lender hereunder, and any Lenders who are Affiliates of Agent, is less than $10,000,000.00, then Agent may be removed by an affirmative vote of the Required Lenders (excluding, for this purpose, the vote of Agent, in its capacity as a Lender, and excluding the aggregate outstanding principal amount of Notes held by Agent in its capacity as Lender in calculating the aggregate outstanding principal amount of Notes held by Non-Delinquent Lenders).”

15. Ratification by Borrower. Borrower hereby (a) renews, ratifies and confirms the indebtedness evidenced by the Notes and the other Loan Documents, as modified hereby; (b) acknowledges that the liens and security interests created and evidenced by the Mortgages and other Loan Documents are valid, subsisting and enforceable in accordance with their terms, as modified hereby; (c) acknowledges and agrees that, as of the Effective Date, Borrower has no offsets, claims, counterclaims or defenses to the indebtedness evidenced by the Notes and the other Loan Documents, as modified hereby, or otherwise with respect to the Loan or the Loan Documents; (d) acknowledges and agrees that Borrower is, and shall remain, liable for the prompt and timely payment and performance of the indebtedness evidenced by the Notes and the other Loan Documents, as modified hereby; (e) agrees that the Loan Documents are and remain in full force and effect, except as expressly modified hereby, and that the Loan Documents continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective 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); and (f) represents and warrants that, after giving effect to the terms and conditions of this Amendment (i) there are no uncured Events of Default under the Loan Documents and no event, condition or state of facts exists or has occurred and remains uncured that, with the giving of notice or passage of time or both, would constitute an Event of Default under the Loan Documents, (ii) the representation and warranties in the Loan Agreement and the other Loan Documents are true and correct as of the date hereof, and (iii) there has been no material adverse change in the financial condition of Borrower, Guarantors or any other party whose financial statement has been delivered to Agent in connection with the Loan from the date of the most recent financial statement received by Agent.

16. Reaffirmation of Guarantor Documents. Guarantors hereby ratify and affirm the Guaranty and Environmental Indemnity (collectively, the “Guarantor Documents”), and consent to and acknowledge this Amendment and reaffirm and acknowledge their liability to Lenders under the Guarantor Documents subject to the terms and conditions thereof and agree that the duties, liabilities and obligations under the Guarantor Documents shall not in any manner be impaired, discharged or released by this Amendment. Guarantors hereby represent and warrant that (i) the representations and warranties of Guarantors contained in the
Guarantor Documents are, as of the Effective Date, true and correct and Guarantors do not know of any default thereunder, (ii) each of the Guarantor Documents continues to be the valid and binding obligations of Guarantors, enforceable in accordance with their respective 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), and (iii) Guarantors have no offsets, claims, counterclaims or defenses to the enforcement of the rights and remedies of Lenders thereunder.

17. **Modification of other Loan Documents.** All references in the other Loan Documents to the (a) “Loan” shall refer to Loan, as amended by this Amendment and (b) “Loan Agreement” shall mean the Loan Agreement as modified hereby.

18. **Continued Validity.** Except as expressly provided in this Amendment, all terms, conditions, representations, warranties, and covenants contained in the Loan Agreement and the other Loan Documents shall remain in full force and effect, and are hereby ratified, confirmed and acknowledged by Borrower and Guarantors.

19. **Representations and Warranties.** Borrower hereby represents and warrants to Agent and Lenders that (i) Borrower is validly existing under the laws of the State of Delaware, and has the requisite power and authority to execute and deliver this Amendment, (ii) the execution and delivery of this Amendment has been duly authorized by all requisite action by or on behalf of Borrower, (iii) this Amendment has been duly executed and delivered on behalf of Borrower, and (iv) the execution, delivery and performance of this Amendment do not and will not violate or conflict with, result in a breach of or require any consent under the articles or certificate of incorporation, bylaws, partnership agreement, trust agreement or other organizational documents of Borrower, any applicable laws or any material agreement binding on Borrower or any of its property.

20. **No Waiver, etc.** This Amendment does not affect or limit Agent’s and/or any Lenders’ rights or remedies in any way with respect to any existing or future act or omission (including any breach of the terms of this Amendment by Borrower) that may constitute a default by Borrower, or with respect to any Default or Event of Default resulting from prior or future acts or omissions by Borrower. This Amendment does not, and shall not be construed to, create any obligation by Agent, Lenders, or any of them, to forbear from any Default or Event of Default that may exist now or in the future under the Loan Agreement or the other Loan Documents. Agent expressly reserves, on behalf of itself and Lenders, all of, and does not modify or waive in any way any of, its or their rights and remedies under the Loan Agreement, the other Loan Documents, applicable law or otherwise and Agent, on behalf of itself and on behalf of Lenders, hereby reserves all of its and their rights and remedies under all of the Loan Documents and applicable law.

21. **Fees and Expenses.** Borrower agrees to pay all reasonable fees and expenses incurred by Agent and Lenders in connection with the negotiation of this Amendment, and the transactions contemplated hereby, including, without limitation, fees and costs of third-party consultants, accountants or professionals retained by Agent and Lenders and reasonable attorneys’ fees and expenses.

22. **Construction.** This Amendment and the rights and obligations of the parties hereunder shall be construed and interpreted in accordance with and governed by, the laws of the State of New York and any applicable laws of the United States of America. The following provisions of general application in the Loan Agreement apply to this Amendment and to the Loan Agreement, as amended by this Amendment: Sections 9.11 – 9.15, 9.18 – 9.22, and 9.34 – 9.38.

23. **Binding Effect.** This Amendment shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns; provided, however, that Borrower shall not assign or transfer its rights or obligations hereunder without the prior written consent of the Agent and Lenders.

24. **Counterparts.** This Amendment may be executed in several counterparts, each of which shall be fully effective as an original, and all of which together shall constitute one and the same instrument.

25. **NO ORAL AGREEMENTS.** THIS AMENDMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES

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IN WITNESS WHEREOF, the parties, intending to be legally bound hereby, have duly executed this Amendment 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

AGENT AND LENDER:

ORIX CAPITAL MARKETS, LLC, a Delaware limited liability company (as Agent and Lender)

By:  /s/ Jim Dunn
Name:  Jim Dunn
Title:  President

LENDER:

VARIAN MEDICAL SYSTEMS INTERNATIONAL AG, a Swiss corporation (as Lender)

By:  /s/ John W. Kuo
Name:  John W. Kuo
Title:  President

GUARANTORS:

/s/ Jeffrey L. Bordok
JEFFREY L. BORDOK

/s/ James Thomson
JAMES THOMSON

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

Parcel A:


Parcel B:


APN: 809-333-77-40
THIRD AMENDMENT TO LOAN AND SECURITY AGREEMENT AND OTHER LOAN DOCUMENTS AND AMENDMENT TO FEE DEED OF TRUST AND LEASEHOLD DEED OF TRUST

THIS THIRD AMENDMENT TO LOAN AND SECURITY AGREEMENT AND OTHER LOAN DOCUMENTS AND AMENDMENT TO FEE DEED OF TRUST AND LEASEHOLD DEED OF TRUST (this “Amendment”) is made effective as of November 6, 2015 (the “Effective Date”), among ORIX CAPITAL MARKETS, LLC, a Delaware limited liability company, in its capacity as agent (“Agent”) on behalf of Lenders (as hereinafter defined), ORIX CAPITAL MARKETS, LLC, a Delaware limited liability company (“ORIX”), VARIAN MEDICAL SYSTEMS INTERNATIONAL AG, a Swiss corporation (“Varian”) and JPMORGAN CHASE BANK, N.A., a national banking association (“JPM”) (ORIX, Varian and JPM are collectively referred to herein as “Lenders”), CALIFORNIA PROTON TREATMENT CENTER, LLC, a Delaware limited liability company (“Borrower”), and JEFFREY L. BORDOK and JAMES THOMSON (collectively, “Guarantors”).

RECITALS:

A. Borrower, Lenders and Agent have entered into that certain Loan and Security Agreement dated as of September 30, 2011 (the “Original Loan Agreement”), as amended by that certain First Amendment to Loan and Security Agreement and Other Loan Documents dated October 25, 2013 (the “First Amendment”), and as further amended by that certain Second Amendment to Loan and Security Agreement and Other Loan Documents dated as of June 10, 2014 (the “Second Amendment”) (the Original Loan Agreement, as amended by the First Amendment and the Second Amendment, is hereinafter referred to as the “Loan Agreement”) pursuant to which Lenders agreed to make the loans described therein (collectively, the “Loan”) to Borrower for the purpose of developing and constructing the Project.
B. The Loan is secured by (i) a Deed of Trust, With Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “Fee Deed of Trust”) dated as of September 30, 2011, executed by Borrower for the benefit of Agent and Lenders and recorded on October 6, 2011, with the Recorder of Deeds of San Diego County (“Public Office”) as Document No. 2011-0523668, which Fee Deed of Trust encumbers the real property legally described on attached Exhibit A (the “Premises”); (ii) a Leasehold Deed of Trust, With Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “Leasehold Deed of Trust”) dated as of September 30, 2011, executed by Borrower for the benefit of Agent and Lenders and recorded on October 6, 2011, in Public Office as Document No. 2011-0523669, which Leasehold Deed of Trust encumbers the leasehold interest (the “Leasehold Interest”) in the Land and the Improvements pursuant to that certain Ground Sublease entered into by and between ORIX Proton San Diego, LLC, a Delaware limited liability company, as sublessor, and Borrower, as sublessee, dated as of September 30, 2011 (as amended from time to time, the “Ground Sublease”). The Fee Deed of Trust and the Leasehold Deed of Trust were each amended by the Second Amendment, which was recorded on July 11, 2014, as Instrument No. 2014-0288636 in Public Office. Borrower’s performance under the Loan Agreement is supported by (i) a Guaranty dated as of September 30, 2011, executed by Guarantors in favor of Agent and Lenders (“Guaranty”); (ii) a Guaranty of Completion dated as of September 30, 2011, executed by Guarantors in favor of Agent and Lenders (“Guaranty of Completion”); (iii) an Unsecured Environmental Indemnity Agreement dated as of September 30, 2011, executed by Borrower and Guarantors in favor of Agent and Lenders (“Environmental Indemnity”), and (iv) certain other loan documents (the Note, Fee Deed of Trust, Leasehold Deed of Trust, Guaranty, Guaranty of Completion, Environmental Indemnity, Loan Agreement, the First Amendment, the Second Amendment and other documents evidencing, securing or guarantying the Loan, in their original form and as amended from time to time, are sometimes collectively referred to herein as the “Loan Documents”) (the Fee Deed of Trust and the Leasehold Deed of Trust are collectively referred to as the “Deeds of Trust”).

C. On November 6, 2015, Agent notified Borrower in writing that the maturity of the Loan was accelerated and that all amounts then due to Agent and Lenders under the Loan Documents were as a result immediately due and payable.

D. Borrower, Agent, Lenders and Guarantors have concurrently executed and delivered a Forbearance Agreement and Consent to Secondment (the “Forbearance Agreement”) dated as of November 6, 2015, with respect to the “Existing Defaults” defined in the Forbearance Agreement.

E. Pursuant to the Forbearance Agreement, Borrower has requested that Lenders and Agent modify certain of the terms of the Loan, and Lenders and Agent have agreed to such request, subject to the terms and conditions of this Amendment, under the express agreement that notwithstanding such modification and the performance of the terms thereof that are set forth in this Agreement, (i) such Existing Defaults shall continue to exist, and (ii) Lenders shall continuously have the right to, in their sole and absolute discretion, record in Public Office and serve, notices of default and elections to sell with respect to the Fee Deed of Trust and the Leasehold Deed of Trust at any time and from time to time, regardless of whether or not the Forbearance Period (defined in the Forbearance Agreement) has ended (and any such recorded notices of default shall remain
NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent, Lenders, Borrower and Guarantors hereby agree as follows:

1. **Defined Terms.** Capitalized terms used but not otherwise defined in this Amendment shall have the meanings ascribed to them in the Loan Agreement (as modified hereby). Additional terms defined herein are incorporated into the Loan Agreement. This Amendment is a Loan Document under and as defined in the Loan Agreement.

2. **Recitals.** All of the Recitals stated above are true and accurate and by this reference are incorporated into and made a part of the body of this Amendment.

3. **Tranche C Loan.** Section 10 of the Forbearance Agreement, dated as of even date herewith entered into by and among Borrower, Agent, the Lenders and the Guarantors is incorporated herein by reference as if set forth herein at length. The Borrower shall execute and deliver to the Lenders new promissory notes substantially in the form of the Tranche A Notes made by Borrower for each Lender in the amount of such Lender’s Pro Rata Share of the Tranche C Loan, which notes shall collectively be in the aggregate original principal amount of up to $9,700,000.

4. **The Loan; Notes.**

   (a) The definition of “Loan” as set forth in Schedule 1.2 of the Loan Agreement is hereby deleted in its entirety and is replaced with the following:

   “‘Loan’ means the loan made pursuant to this Agreement, consisting of three tranches. The first tranche is in the original amount of up to $165,300,000 (‘Tranche A’). The second tranche is in the original amount of $10,000,000 (‘Tranche B’). The third tranche is in the amount of up to $9,700,000 (‘Tranche C’). Unless otherwise provided herein, the term ‘Loan’ shall mean and include all principal amounts Advanced under each of Tranche A, Tranche B and Tranche C. For avoidance of doubt, no further advances shall be made under Tranche A or Tranche B.”

   (b) The definition of “Notes” as set forth in Schedule 1.2 of the Loan Agreement is hereby deleted in its entirety and is replaced with the following:

   “‘Notes’ means (i) the Replacement Notes – Tranche A made by Borrower dated as of September 30, 2011 (the “Tranche A Notes”), one for each Lender payable for the account of such Lender, (ii) the promissory note dated as of June 10, 2014 made by Borrower and payable to Varian in the original principal amount of $10,000,000 (the “Tranche B Note”) and the promissory notes made by Borrower dated as of November 6, 2015, one for each Lender payable for the account of such Lender in the aggregate original principal amount of $9,700,000 (the “Tranche C Notes”) and; as the same may hereafter be amended, modified, extended, severed,
5. **Loan Amount; Individual Loan Commitment; Pro Rata Share**.

(a) The definition of “Loan Amount” as set forth in Section 1.1.4(n) of the Loan Agreement is hereby amended to mean $185,000,000.

(b) The definition of “Pro Rata Share” as set forth in Schedule 1.2 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

```
“Pro Rata Share,” “Tranche A Pro Rata Share,” “Tranche B Pro Rata Share,” and “Tranche C Pro Rata Share” mean, respectively, at any particular time with respect to each Lender, (i) the ratio of such Lender’s outstanding Individual Loan Commitment to the Loan Amount, (ii) the ratio of such Lender’s Individual Loan Commitment allocated to Tranche A to Tranche A, (iii) the ratio of such Lender’s Individual Loan Commitment allocated to Tranche B to Tranche B, and (iv) the ratio of such Lender’s Individual Loan Commitment allocated to Tranche C to Tranche C, in each case 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, each Lender’s respective Pro Rata Share, Tranche A Pro Rata Share, Tranche B Pro Rata Share and Tranche C Pro Rata Share are as follows:
```

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<th>Tranche A Pro Rata Share</th>
<th>Tranche B Pro Rata Share</th>
<th>Tranche C Pro Rata Share</th>
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<td>0.00000%</td>
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(c) Section 2.3.2(d) of the Loan Agreement is hereby amended by the addition of the following as the last sentence thereof:

```
“Notwithstanding anything in this Agreement to the contrary, commencing on November 6, 2015, each subsequent advance of proceeds of the Loan shall be made and allocated in accordance with each Lender’s Tranche C Pro Rata Share, until $9,700,000.00 in the aggregate shall have been Advanced, which amount shall be allocated to Tranche C and funded under the Tranche C Notes.”
```
(d) Section 3.2 of the Loan Agreement is hereby amended by the addition of the following new Section 3.2.7 at the end thereof:

“3.2.7 Procedures for Advances under Tranche C. Notwithstanding anything in this Agreement to the contrary, commencing on November 6, 2015, each Advance under the Tranche C Loan shall be made and allocated in accordance with Section 10 of the Forbearance Agreement, dated as of November 6, 2015 entered into by and among Borrower, Agent, the Lenders and the Guarantors.”

(e) Section 3.2.1(g) of the Loan Agreement is hereby deleted in its entirety and is replaced with the following:

“(g) Agent shall have received from each Lender such Lender’s Pro Rata Share, Tranche A Pro Rata Share, Tranche B Pro Rata Share or Tranche C Pro Rata Share, as applicable, of each such Advance.”

(f) Each incidence of the phrase “Pro Rata Share or Tranche B Pro Rata Share, as applicable,” in Sections 3.2.6 and 10.12(a) of the Loan Agreement is hereby deleted and replaced with “Lender’s Pro Rata Share, Tranche A Pro Rata Share, Tranche B Pro Rata Share or Tranche C Pro Rata Share, as applicable,”

(g) Section 10.16(c) of the Loan Agreement is hereby deleted in its entirety and is replaced with the following:

“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 Tranche C Pro Rata Share of all Indebtedness allocated to Tranche C, their respective Tranche A Pro Rata Share of all Indebtedness allocated to Tranche A, and their respective Tranche B Pro Rata Share of all Indebtedness allocated to Tranche B (in the order of priority as set forth in Section 2.3.2(b)), 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 Tranche C Notes of the Non-Delinquent Lenders until the entire outstanding principal balance of the Tranche C Notes of the Non-Delinquent Lenders has been paid in full; next, all sums which constitute a payment of principal under the Loan shall be treated as a repayment of principal under the Tranche A Notes of the Non-Delinquent Lenders until the entire outstanding principal balance of the Tranche A Notes of the Non-Delinquent Lenders has been paid in full; next, all remaining sums which constitute a payment of principal under the Loan shall be treated as a repayment of principal under the Tranche B Note of the Non-Delinquent Lenders until the entire outstanding principal balance of the Tranche B Note of the Non-Delinquent Lenders has been paid in full; 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.”

6. **Priority and Application of Payments.**

   (a) The first sentence of Section 2.3.2(b) of the Loan Agreement is hereby deleted in its entirety and is replaced with the following:

   “Subject to the terms and conditions of Section 2.3.2(c), 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) in the following order: such Lender’s Tranche C Pro Rata Share of the payments of principal and interest made on the Tranche C Notes, such Lender’s Tranche A Pro Rata Share of the payments of principal and interest made on the Tranche A Notes, such Lender’s Tranche B Pro Rata Share of the payments of principal and interest made on the Tranche B Note, 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, Tranche A Pro Rata Share, Tranche B Pro Rata Share or Tranche C Pro Rata Share, as applicable, 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.”

   (b) Section 2.3.2(c) of the Loan Agreement is hereby deleted in its entirety and is replaced with the following:

   “(c) Except as provided in Section 10.16, (i) provided that no Event of Default exists, payments made on the Loan will be applied first to any unpaid Charges, second, proportionally, to the aggregate interest due on the Tranche C Notes, third, proportionally, to the aggregate interest due on the Tranche A Notes, fourth, proportionally, to the interest due on the Tranche B Note, fifth, proportionally, to the aggregate outstanding principal balance of the Tranche C Notes, the Tranche A Notes and the Tranche B Note, and sixth to the Minimum Interest Lookback Amount (if any) and the Exit Fee (if any), and (ii) so long as an Event of Default remains outstanding, payments made on the Loan will be applied first to any unpaid Charges, second to the aggregate interest due on the Tranche C Notes, third to the aggregate
outstanding principal balance of the Tranche C Notes, fourth to the aggregate interest due on the Tranche A Notes, fifth to the aggregate outstanding principal balance of the Tranche A Notes, sixth, to the interest due on the Tranche B Note, seventh to the outstanding principal balance of the Tranche B Note, and eighth to the Minimum Interest Lookback Amount (if any) and the Exit Fee (if any). The foregoing notwithstanding, provided that no Event of Default exists, all principal payments other than required amortization payments hereunder will be applied first, proportionally, to the outstanding principal balance of the Tranche C Notes until paid in full, then to the outstanding principal amount of the Tranche A Notes until paid in full, and then to the outstanding principal amount of the Tranche B Note."

7. **Ratification by Borrower.** Borrower hereby (a) renews, ratifies and confirms the indebtedness evidenced by the Notes and the other Loan Documents, as modified hereby and by the Forbearance Agreement (the “Amended Loan Documents”); (b) acknowledges that the liens and security interests created and evidenced by the Mortgages and other Amended Loan Documents are valid, subsisting and enforceable in accordance with their terms, as modified hereby; (c) acknowledges and agrees that, as of the Effective Date, Borrower has no offsets, claims, counterclaims or defenses to the indebtedness evidenced by the Notes and the other Amended Loan Documents, as modified hereby, or otherwise with respect to the Loan as amended hereby or the Amended Loan Documents; (d) acknowledges and agrees that Borrower is, and shall remain, liable for the prompt and timely payment and performance of the indebtedness evidenced by the Notes and the other Amended Loan Documents, as modified hereby; and (e) agrees that the Amended Loan Documents are and remain in full force and effect, except as expressly modified hereby, and that the Amended Loan Documents continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective 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).

8. **Reaffirmation of Guarantor Documents.** Guarantors hereby ratify and affirm the Guaranty and Environmental Indemnity with respect to the Amended Loan Documents (collectively, the “Guarantor Documents”), and consent to and acknowledge this Amendment and reaffirm and acknowledge their liability to Lenders under the Guarantor Documents subject to the terms and conditions thereof and agree that the duties, liabilities and obligations under the Guarantor Documents shall not in any manner be impaired, discharged or released by this Amendment. Guarantors hereby represent and warrant that (i) the representations and warranties of Guarantors contained in the Guarantor Documents are, as of the Effective Date, true and correct and Guarantors do not know of any default thereunder, (ii) each of the Guarantor Documents continues to be the valid and binding obligations of Guarantors, enforceable in accordance with their respective 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), and (iii) Guarantors have no offsets, claims, counterclaims or defenses to the enforcement of the rights and remedies of Lenders thereunder.

9. **Modification of other Loan Documents.** All references in the other Loan Documents to the (a) “Loan” shall refer to Loan, as amended by this Amendment and (b) “Loan Agreement” shall mean the Loan Agreement as modified hereby.
10. **Continued Validity**. Except as expressly provided in this Amendment, all terms, conditions, representations, warranties, and covenants contained in the Loan Agreement and the other Loan Documents shall remain in full force and effect, and are hereby ratified, confirmed and acknowledged by Borrower and Guarantors.

11. **Representations and Warranties**. Borrower hereby represents and warrants to Agent and Lenders that (i) Borrower is validly existing under the laws of the State of Delaware, and has the requisite power and authority to execute and deliver this Amendment, (ii) the execution and delivery of this Amendment has been duly authorized by all requisite action by or on behalf of Borrower, (iii) this Amendment has been duly executed and delivered on behalf of Borrower, and (iv) the execution, delivery and performance of this Amendment do not and will not violate or conflict with, result in a breach of or require any consent under the articles or certificate of incorporation, bylaws, partnership agreement, trust agreement or other organizational documents of Borrower, any applicable laws or any material agreement binding on Borrower or any of its property.

12. **No Waiver, etc**. This Amendment does not affect or limit Agent’s and/or any Lenders’ rights or remedies in any way with respect to any existing or future act or omission (including any breach of the terms of this Amendment by Borrower) that may constitute a default by Borrower, or with respect to any Default or Event of Default resulting from prior or future acts or omissions by Borrower. This Amendment does not, and shall not be construed to, create any obligation by Agent, Lenders, or any of them, to forbear from any Default or Event of Default that may exist now or in the future under the Loan Agreement or the other Loan Documents. Agent expressly reserves, on behalf of itself and Lenders, all of, and does not modify or waive in any way any of, it’s or their rights and remedies under the Loan Agreement, the other Loan Documents, applicable law or otherwise and Agent, on behalf of itself and on behalf of Lenders, hereby reserves all of its and their rights and remedies under all of the Loan Documents and applicable law.

13. **Fees and Expenses**. Borrower agrees to pay all reasonable fees and expenses incurred by Agent and Lenders in connection with the negotiation of this Amendment, and the transactions contemplated hereby, including, without limitation, fees and costs of third-party consultants, accountants or professionals retained by Agent and Lenders and reasonable attorneys’ fees and expenses.

14. **Construction**. This Amendment and the rights and obligations of the parties hereunder shall be construed and interpreted in accordance with and governed by, the laws of the State of New York and any applicable laws of the United States of America. The following provisions of general application in the Loan Agreement apply to this Amendment and to the Loan Agreement, as amended by this Amendment: Sections 9.11 – 9.15, 9.18 – 9.22, and 9.34 – 9.38.

15. **Binding Effect**. This Amendment shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns; provided, however, that Borrower shall not assign or transfer its rights or obligations hereunder without the prior written consent of the Agent and Lenders.
16. **Counterparts.** This Amendment may be executed in several counterparts, each of which shall be fully effective as an original, and all of which together shall constitute one and the same instrument.

17. **Survival of Existing Defaults and Any Recorded Notices of Default.** Borrower hereby acknowledges and agrees that the Existing Defaults have not been waived nor shall the entry into or performance of this Amendment by the Lenders, or the making of any Tranche C Loans by the Lenders, result in any such waiver. Borrower agrees that the Existing Defaults shall remain outstanding and enforceable Events of Default under the Loan Agreement unless and until waived in a subsequent writing by the Lenders. The Borrower further acknowledges and agrees that any recorded notices of default shall remain in full force and effect throughout the duration of the Forbearance Period (defined in the Forbearance Agreement) and thereafter.

18. **NO ORAL AGREEMENTS.** THIS AMENDMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES

[REMAINDER OF PAGE INTENTIONALLY BLANK]
IN WITNESS WHEREOF, the parties, intending to be legally bound hereby, have duly executed this Amendment 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/ Jeffrey L. Bordok
Name: ____________ Jeffrey L. Bordok
Title: ____________ Manager

[signatures follow]

Signature Page to Third Amendment to Loan and Security Agreement and Other Loan Documents
AGENT AND LENDER:

ORIX CAPITAL MARKETS, LLC, a Delaware limited liability company (as Agent & Lender)

By: /s/ Scott Cronister
Name: Scott Cronister
Title: Chief Operating Officer

LENDER:

VARIAN MEDICAL SYSTEMS INTERNATIONAL AG, a Swiss corporation (as Lender)

By: /s/ John W. Kuo
Name: John W. Kuo
Title: Director

LENDER:

JPMORGAN CHASE BANK, N.A., a national banking association (as Lender)

By: /s/ Neil R. Boylan
Name: Neil R. Boylan
Title: Managing Director

GUARANTOR:

/s/ Jeffrey L. Bordok
JEFFREY L. BORDOK

GUARANTOR:
EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

Parcel A:


Parcel B:


APN: 341-470-15-00

Signature Page to Third Amendment to Loan and Security Agreement and Other Loan Documents
LOAN AND SECURITY AGREEMENT (BUILDING LOAN)
dated as of July 15, 2015

by and among

MM PROTON I, LLC,
as Borrower,

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent and Collateral Agent,

and

the Lenders referenced herein

$145,543,138

This Agreement was prepared by:

[****] *

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been
requested with respect to the omitted portions.
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LOAN AND SECURITY AGREEMENT (BUILDING LOAN)

THIS LOAN AND SECURITY AGREEMENT (BUILDING LOAN) (the “Agreement”) dated as of this 15th day of July, 2015, is by and among MM PROTON I, LLC, a Delaware limited liability company (“Borrower”), having its address at [***], JPMORGAN CHASE BANK, N.A., (“JPMorgan”) in its capacity as Administrative Agent (as hereinafter defined) and Collateral Agent (as hereinafter defined), having its address at [***], and each party (each, a “Lender”) identified and having its address at the location shown on Schedule 1.01 hereto.

RECITALS

WHEREAS, Borrower is acquiring from the New York City Economic Development Corporation, by deed and by lease as more particularly described herein, rights to that certain real property located in the City of New York, Borough of Manhattan, and State of New York, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “Land”);

WHEREAS, Borrower proposes to construct or cause to be constructed upon the Land certain Improvements (as hereinafter defined) in accordance with the Plans and Specifications (as hereinafter defined);

WHEREAS, Borrower proposes to lease the Property (as hereinafter defined), as so improved, to New York Proton Management, LLC, a New York limited liability company (“Facility Lessee”) pursuant to that certain Facility Lease (as hereafter defined);

WHEREAS, pursuant to the Facility Lease, Facility Lessee will install a Proton System (as hereinafter defined) to provide proton therapy in four treatment rooms (the Property, as improved by the Proton System, the “Facility”);

WHEREAS, Borrower has requested, and the Lenders have agreed to provide, two separate loans to Borrower:

(i) For the construction of the Improvements on the terms and conditions set forth herein; and

(ii) For certain other costs relating to the Facility pursuant to that certain Loan and Security Agreement (Project Loan), dated of even date herewith, among Borrower, Administrative Agent, Collateral Agent and the Lenders (the “Project Loan Agreement”);

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

*Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
ARTICLE I
DEFINED TERMS

1.01 Definitions. The following terms shall have the meanings defined below. Unless otherwise specified, any reference to any instrument, document or agreement shall include any and all extensions, renewals, modifications, amendments, supplements and replacements therefor or thereto, and any reference to any party shall include its successor and assigns.


“Administrative Agent” means JPMorgan, in its capacity as administrative agent for the Lenders hereunder.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by Administrative Agent.

“Administrative Services Agreement” means that certain Administrative Services and License Agreement, dated as of even date herewith, by and between Facility Lessee and Operator.

“Advance” means a borrowing hereunder, made by the Lenders to Borrower, on a Borrowing Date.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. Notwithstanding anything herein to the contrary, in no event shall any Lender be considered an “Affiliate” of any Loan Party.

“Aggregate Loan Commitment” means, as of any date of determination, the aggregate of the Aggregate Senior First Lien Loan Commitment, the Aggregate Senior Second Lien Loan Commitment and the Aggregate Subordinated Loan Commitment.

“Aggregate Senior First Lien Loan Commitment” means, as of any date of determination, the aggregate of the Commitments of all the Senior First Lien Lenders. As of the date hereof, the Aggregate Senior First Lien Loan Commitment is $91,348,576.

“Aggregate Senior Second Lien Loan Commitment” means, as of any date of determination, the aggregate of the Commitments of all of the Senior Second Lien Lenders. As of the date hereof, the Aggregate Senior Second Lien Loan Commitment is $48,944,561.

“Aggregate Subordinated Loan Commitment” means, as of any date of determination, the aggregate of the Commitments of all the Subordinated Lenders. As of the date hereof, the Aggregate Subordinated Loan Commitment is $5,250,000.00.

“Agreement” has the meaning set forth in the Preamble.
“Agreement Among Lenders” means the Agreement Among Lenders of even date herewith executed by and among the Collateral Agent and the Lenders.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to Borrower from time to time concerning or relating to bribery or corruption.

“Applicable Percentage” means, with respect to any Lender, the percentage of the Aggregate Senior First Lien Loan Commitment, Aggregate Senior Second Lien Loan Commitment or Aggregate Subordinated Loan Commitment, as the case may be, represented by such Lender’s Commitment; provided that in the case of Section 10.11 hereof when a Defaulting Lender shall exist, “Applicable Percentage” means the percentage of the Aggregate Senior First Lien Loan Commitment, Aggregate Senior Second Lien Loan Commitment or Aggregate Subordinated Loan Commitment, as the case may be, (disregarding any Defaulting Lender’s Commitment) represented by such Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments.

“Appraisal” means a written statement setting forth an opinion of the market value of the Facility that (i) has been independently and impartially prepared by a qualified appraiser, holding an MAI designation licensed or certified under the laws of New York satisfying the requirements of FIRREA, directly engaged by Administrative Agent, (ii) complies with all applicable federal and state laws and regulations dealing with appraisals or valuations of real property, and (iii) has been reviewed as to form and content and approved by Administrative Agent, in its reasonable discretion.

“Approved Fund” has the meaning set forth in Section 11.04(b)(ii) hereof.

“Architect” means VOA Architecture PLLC.

“Architect’s Certificate” means a certificate of Architect in form and substance acceptable to Administrative Agent.


“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 11.04 hereof), and accepted by Administrative Agent, in the form of Exhibit D attached hereto or any other form approved by Administrative Agent.

“Assignments and Consents” means each of the (i) Assignment of Architectural Services Agreement (Construction Administration) and Consent, (ii) Assignment of Construction Contract and Consent, (iii) Assignment of Proton System Agreements and Consent, (iv) Assignment of Leases and Consent, (v) Assignment of Leases and Rents (Facility Lessee) and Consent, (vi)
Assignment of Facility Lessee Operating Agreement and Consent, and (vii) Assignment of Leasehold Mortgage and Consent and (viii) Assignment and Subordination of Development Agreement and Consent and (ix) Assignment of Architectural Services Agreement (Design) and Consent.

“Assignment and Subordination of Development Agreement and Consent” means the Assignment and Subordination of Development Agreement of even date herewith executed by Borrower in favor of Collateral Agent, for the benefit of the Secured Parties, together with the Consent and Agreement of the Developer, as amended or otherwise modified from time to time.

“Assignment of Architectural Services Agreement (Design) and Consent” means the Assignment of the Architectural Services Agreement (Design), relating to the Architectural Services Agreement (Design), of even date herewith executed by Facility Lessee in favor of Borrower, and Borrower in favor Collateral Agent, for the benefit of the Secured Parties, together with the Consent and Agreement of the Architect.

“Assignment of Leases and Rents (Facility Lessee) and Consent” means the Assignment of Leases and Rents (Facility Lessee) of even date herewith executed by Facility Lessee in favor of Borrower, and executed by Borrower in favor Collateral Agent, for the benefit of the Secured Parties, together with the Consent and Agreement of Operator, as amended or otherwise modified from time to time.

“Assignment of Construction Contract and Consent” means the Assignment of Construction Contract of even date herewith executed by Borrower in favor of Collateral Agent, for the benefit of the Secured Parties, together with the Consent and Agreement of the Contractor, as amended or otherwise modified from time to time.

“Assignment of Architectural Services Agreement (Construction Administration) and Consent” means the Assignment of Architectural Services Agreement (Construction Administration) of even date herewith executed by Borrower in favor of Collateral Agent, for the benefit of the Secured Parties, together with the Consent and Agreement of Architect, as amended or otherwise modified from time to time.

“Assignment of Facility Lessee Operating Agreement and Consent” means the Assignment of Facility Lessee Operating Agreement of even date herewith executed by Facility Lessee in favor of Borrower, and executed by Borrower in favor Collateral Agent, for the benefit of the Secured Parties, relating to the pledge of Supplemental Capital Contribution Obligation, together with the Consent and Agreement of Consortium, as amended or otherwise modified from time to time.

“Assignment of Leases and Consent” means the Assignment of Leases and Rents (Building Loan) of even date herewith executed by Borrower in favor of Collateral Agent, for the benefit of the Secured Parties, together with the Consent and Agreement of Facility Lessee, as amended or otherwise modified from time to time.

“Assignment of Leasehold Mortgage and Consent” means the Assignment of Leasehold Mortgage of even date herewith executed by Borrower in favor of Collateral Agent.
for the benefit of the Secured Parties, together with the Consent and Agreement of Facility Lessee, as amended or otherwise modified from time to time.

“Assignment of Proton System Agreements and Consent” means the Assignment of Varian Agreements, relating to the Proton System Purchase Agreement and the Proton System Operations and Maintenance Agreement, of even date herewith executed by Facility Lessee in favor of Borrower, and Borrower in favor Collateral Agent, for the benefit of the Secured Parties, together with the Consent and Agreement of Proton System Supplier, as amended or otherwise modified from time to time.

“Balancing Deposit” means an Interest Balancing Deposit, a Non-Interest Balancing Deposit, or a Proton System Balancing Deposit, as applicable.

“Bankruptcy Event” means, with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business, appointed for it, or, in the good faith determination of Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof if and so long as such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality), to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person or admits in writing its inability to pay debts.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” has the meaning set forth in the preamble.

“Borrower Collateral” means all right, title and interest of Borrower in and to the following, whether now existing or hereafter arising: (a) the Facility, (b) the Project Documents, (c) the Collateral Account Pledge Agreement, including any Collateral Account, (d) Borrower’s interest in any Facility Lessee Collateral, including any interest created under any Assignment and Consent or the Leasehold Mortgage, (e) the Facility Lessee Loan and Facility Lessee Loan and Security Agreement, (f) any account, general intangible or payment intangible of every kind, nature and description, arising out of or relating to any of the foregoing, (g) all other real or personal property of Borrower, including “goods”, “instruments”, “chattel paper”, “accounts”, “securities entitlements” and “general intangibles” of Borrower and (h) all cash and noncash proceeds (including insurance proceeds) of all of the foregoing property, all products thereof and all additions and accessions thereto, substitutions therefor and replacements thereof.

“Borrower Construction Account” means the Borrower Construction Account established under the Collateral Account Pledge Agreement into which proceeds of the Loans hereunder may be deposited at the direction of the Administrative Agent.
“Borrower Balancing Deposit” means an Interest Balancing Deposit or a Non-Interest Balancing Deposit, as applicable.

“Borrower Estoppel” means that certain estoppel certificate dated the Closing Date, pursuant to which Borrower certifies that no default exists under the Facility Lease, and that the Facility Lease is in full force and effect.

“Borrower Managing Member” means MM Proton I Investors, LLC until such time as a Person designated by Borrower Profit Participant shall succeed to the authority of the managing member pursuant to the terms of the Operating Agreement of Borrower or pursuant to that certain Equity Participation Agreement between MM Proton I Investors, LLC and Borrower Profit Participant, at which time Borrower Managing Member shall mean such Person designated by Borrower Profit Participant as specified in a notice from Borrower Profit Participant to the Administrative Agent.

“Borrower Member Collateral” means all of the member interests, as pledged by the Borrower Managing Member, and any Borrower Non-Managing Members in Borrower who may subsequently join as pledgor, to Collateral Agent pursuant to the Borrower Member Pledge Agreement, including all cash and noncash proceeds of all of the foregoing property, all products thereof and all additions and accessions thereto, substitutions therefor and replacements thereof.

“Borrower Member Financing Statement” means the UCC financing statement covering the security interests in personal property granted by Borrower Managing Member to Collateral Agent for the benefit of the Secured Parties, in the Borrower Member Pledge Agreement for filing with the Secretary of State of the State of Delaware.

“Borrower Member Pledge Agreement” means the Borrower Member Pledge Agreement of even date herewith executed by the Borrower Managing Member in favor of Collateral Agent, for the benefit of the Secured Parties, as amended or otherwise modified from time to time.

“Borrower Non-Managing Members” means each member of Borrower that is not Borrower Managing Member.

“Borrower Financing Statement” means the UCC financing statement covering the security interests in personal property granted by Borrower to Collateral Agent for the benefit of the Secured Parties, in the Loan Documents for filing with the Secretary of State of the State of Delaware.

“Borrower Operating Account” means the Borrower Operating Account established under the Collateral Account Pledge Agreement into which proceeds of the Loans hereunder will be deposited, unless directed to the Borrower Construction Account by the Administrative Agent.

“Borrower Profit Participant” means Goldman, Sachs & Co., a Delaware corporation.

“Borrower’s Initial Equity Requirement” means $2,022,000, less amounts credited to Borrower for costs incurred prior to the Closing Date, as approved by the Administrative Agent.
“**Borrowing Date**” means a date on which an Advance is made hereunder.

“**Building Costs**” means costs for work, labor and materials required to demolish pre-existing structures on the Property and construct and complete the Improvements, including, without limitation, those items identified as “Building Costs” in the Project Budget and constituting hard costs of the Improvements under the Lien Law and repayments of the Facility Lessee Reverse Loan in respect of proceeds thereof used to pay Building Costs.

“**Building Interface Document**” means the agreement between Proton System Supplier, Facility Lessee and Borrower which sets forth the responsibilities of Facility Lessee, Contractor and Proton System Supplier with respect to construction of the Improvements for installation of the Proton System, the schedule for such construction and installation, and the responsibilities for each with respect to all of the aspects of such construction and installation.

“**Business Day**” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

“**Capital Lease Obligations**” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“**Certification of Non-Foreign Status**” means an affidavit, signed under penalty of perjury by an authorized officer of Borrower, stating (a) that Borrower is not a “foreign corporation,” “foreign partnership,” “foreign trust,” or “foreign estate,” as those terms are defined in the Code and the regulations promulgated thereunder, (b) Borrower’s U.S. employer identification number, and (c) the address of Borrower’s principal place of business. Such affidavit shall be consistent with the requirements of the regulations promulgated under section 1445 of the Code, and shall otherwise be in form and substance acceptable to Administrative Agent.

“**Change in Law**” means the occurrence after the date of this Agreement or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement, of: (a) the adoption of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority or (c) compliance by any Lender (or, for purposes of Section 3.08(b) hereof, by any lending office of such Lender or by such Lender’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.
“Charges” has the meaning set forth in Section 11.12 hereof.

“Closing Date” means the earlier of the date of the first disbursement of the Loan or the date all the conditions to the first disbursement have been satisfied, including recording the Mortgage.

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

“Collateral Account” means each of the accounts established under the Collateral Account Pledge Agreement, including each Borrower Construction Account and the Facility Lessee Construction Account.

“Collateral Account Pledge Agreement” means that Collateral Account Pledge Agreement, of even date herewith among Operator, Borrower, Facility Lessee and Collateral Agent, as amended or otherwise modified from time to time.

“Collateral Agent” means JPMorgan, in its capacity as collateral agent for the Lenders hereunder.

“Commitment” means, for each Lender, the amount set forth on Schedule 1.01 or as set forth in any assignment agreement that has become effective pursuant to Section 11.04 hereof, as such amount may be modified from time to time pursuant to the terms hereof.

“Completion of the Facility” means (i) that valid certificates of occupancy (which include temporary certificates of occupancy) for the core and shell of all Improvements shall have been issued by the Building Department of the City of New York and shall be in full force and effect; (ii) that all Governmental Approvals which are required for the then current stage of construction of the Improvements (and which can be issued notwithstanding the fact that the Proton System may not have been completely installed) have been validly issued for the construction of the Improvements; (iii) that the Improvements were built and the Proton System was installed, each in accordance with the Plans and Specifications and all Governmental Approvals in all material respects (including, without limitation, the completion of all Punch List Items) and (iv) that Administrative Agent has received evidence reasonably acceptable to it that the foregoing requirements set forth in clauses (i) – (iii) above have been satisfied.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consortium” means each member of the Facility Lessee, from time to time, and as of the date hereof, as listed on Exhibit F hereto and each member from time to time after the date hereof.

“Construction Contract” means that certain AIA Document A102 - Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus Fee with a Guaranteed Maximum Price), dated of even date herewith, by and between Borrower and Contractor, together with all exhibits, schedules and attachments thereto, including the Building Interface Document the General Conditions and other Contract Documents (as defined therein), providing for the construction of the Improvements.
“Construction Schedule” means a construction schedule for the Facility in form and substance satisfactory to Administrative Agent.

“Contract of Sale” means that certain Amended and Restated Contract of Sale, dated as of December 30, 2013, between EDC and Facility Lessee, as assigned by Facility Lessee to Borrower pursuant to that certain Assignment of Amended and Restated Contract of Sale, dated the Closing Date.

“Contractor” means Gilbane Inc., a Rhode Island corporation.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Cost Grouping” has the meaning set forth in Section 2.08 hereof.

“Credit Party” means Administrative Agent or any other Lender.

“Debtor Relief Laws” means any applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, fraudulent conveyance, reorganization, or similar laws affecting the rights, remedies or recourse of creditors generally, including without limitation, the United States Bankruptcy Code and all amendments thereto, as are in effect from time to time during the term of the Loans.

“Default” has the meaning set forth in Section 8.01 hereof.

“Default Rate” has the meaning set forth in Section 3.04(b) hereof.

“Defaulting Lender” means any Lender that (a) has failed, within 2 Business Days of the date required to be funded or paid, to (i) fund any portion of its Commitment or Loan, or (ii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless in the case of clause (i) above, such Lender notifies Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (identified with reasonably specificity and including the particular Default, if any) has not been satisfied; (b) has notified Borrower or any Credit Party in writing, or has made a public statement, to the effect that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent to funding (specifically identified and including the particular Default, if any) cannot be satisfied) or generally under other agreements in which it commits to extend credit; (c) has failed, within 3 Business Days after request by a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations to fund under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c), upon such Credit Party’s receipt of such certification in form and substance satisfactory to it and Administrative Agent; or (d) has become the subject of a Bankruptcy Event.
“Developer” means [****] *, a Massachusetts limited liability company.

“Developer Fee” means the fee and other costs payable to Developer under the Development Agreement subject to Section 2.08 hereof.

“Development Agreement” means that certain Development Agreement, dated as of even date herewith, by and between Borrower and Developer.

“Disclosure” has the meaning set forth in Section 2.04 hereof.

“dollars” or “$” refers to lawful money of the United States of America.

“Draw Package” has the meaning set forth in Section 2.04(a) hereof.

“Draw Request” has the meaning set forth in Section 2.04(a) hereof.

“EDC” means the New York City Economic Development Corporation.

“EDC Deed” means the bargain and sale deed for the Property delivered by EDC to Borrower, pursuant to the Contract of Sale, and all items to be delivered thereunder.

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

“Electronic System” means any electronic system, including e-mail, e-fax, Intralinks ®, ClearPar® and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by Administrative Agent or any other Person, providing for access to data protected by passcodes or other security system.

“Employee Benefit Plan” means an employee benefit plan as defined in section 3(3) of ERISA, maintained, sponsored by or contributed to by Borrower or any ERISA Affiliate.

“Environmental Indemnity Agreement” means that certain Environmental Indemnity Agreement of even date herewith executed by Borrower in favor of Collateral Agent, for the benefit of the Secured Parties, as amended or otherwise modified from time to time.

“Environmental Laws” means any local, state or federal law, rule (having the effect of law), regulation or order (having the effect of law) relating to the manufacture, storage, use, handling, discharge, transport, disposal, treatment or clean-up of hazardous or toxic substances or materials, including, without limitation, “CERCLA”, “RCRA”, or state superfine or environmental clean-up statutes.

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“**Equity Participation Agreement**” means that certain Equity Participation Agreement, dated of even date herewith, between the Borrower Profit Participant and Borrower.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“**ERISA Affiliate**” means Borrower or any corporation, trade or business that along with Borrower is treated as a single employer under sections 414(b), 414(c), 414(m) or 414(o) of the Code.

“**Excluded Taxes**” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. Federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by Borrower under Section 3.11(b) hereof) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.09 hereof, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender acquired the applicable interest in a Loan or Commitment or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.09(f) hereof and (d) any U.S. Federal withholding Taxes imposed under FATCA.

“**Facility**” has the meaning set forth in the **Recitals**.

“**Facility Lease**” means that certain Lease Agreement, dated as of even date herewith, between Borrower, as lessor, and Facility Lessee, as lessee, of the Facility, together with all exhibits, schedules and attachments thereto, including the Work Letter.

“**Facility Lessee**” has the meaning set forth in the **Recitals**.

“**Facility Lessee Collateral**” has the meaning defined in the Facility Lessee Loan and Security Agreement, subject to a Lien or security interest granted to Borrower therein and assigned to Collateral Agent under the Loan Documents.

“**Facility Lessee Construction Account**” means the Facility Lessee Construction Accounts established under the Collateral Account Pledge Agreement.

“**Facility Lessee Financing Statement**” means the UCC financing statement(s) covering the security interests in personal property granted by Facility Lessee to Borrower in the Facility Lessee Loan and Security Agreement and the Leasehold Mortgage and assigned to Collateral Agent for the benefit of the Secured Parties, for filing with the Secretary of State of the State of New York.
“Facility Lessee Loan” means a loan by Borrower to Facility Lessee, in an amount not to exceed $25,881,698.44 to fund amounts payable by Facility Lessee to Proton System Supplier pursuant to the Proton System Purchase Agreement, as evidenced by the Loan and Security Agreement (Facility Lessee), and further secured by the Leasehold Mortgage.

“Facility Lessee Loan and Security Agreement” means the Loan and Security Agreement (Facility Lessee) between Facility Lessee and Borrower, providing for the Facility Lessee Loan.

“Facility Lessee Manager” means ProHEALTH Proton Center Management LLC, a Delaware limited liability company.

“Facility Lessee Operating Agreement” means that Second Amended and Restated Operating Agreement of Facility Lessee, dated as of even date herewith.

“Facility Lessee Project Cost Advance” means $59,250,000 less Facility Lessee’s previously advanced funds, payable by Facility Lessee to Collateral Agent on the Closing Date, as the initial advance of funds payable by Facility Lessee under the Facility Lease in respect of Facility Lessee Project Costs.

“Facility Lessee Project Costs” means “Lessee’s Project Costs” as defined in Schedule B to the Facility Lease, which includes, but is not limited to, all Proton System Costs.

“Facility Lessee Reverse Loan” has the meaning defined in the Collateral Account Pledge Agreement.

“Facility Substantial Completion Date” means the “4th Proton Treatment Room Substantial Completion Date” as defined in the Work Letter.

“FATCA” means sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to section 1471(b)(1) of the Code.

“Federal Funds Effective Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/16 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/16 of 1%) of the quotations for such day for such transactions received by Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Final Completion” of the Facility means that (i) the Facility is lien free, (ii) “Land and Building Improvements Substantial Completion” has occurred with respect to the “Land and Building Improvements” (as each such term is defined in the Work Letter), and (iii) “Proton Treatment Room Substantial Completion” has occurred with respect to all four “Proton Treatment Rooms” (as each such term is defined in the Work Letter) and (iv) a valid certificate of occupancy continues to be effect, in each case as approved by Administrative Agent and the Independent Engineer in each of their sole but reasonable discretion.
“Force Majeure Causes” means strikes, lockouts or other labor disputes, severe weather conditions, earthquakes or other acts of God, inability to obtain or maintain permits, labor, equipment or materials due to delay or restrictions of any government or governmental authority (including any agency or political subdivision thereof), enemy action, civil commotion, fire or other casualty, acts of war or terrorism, court orders, electrical power surges, failure in public supplies (e.g., water, electricity, etc.), flood, tornadoes, earthquakes and other natural disasters, inclement weather, epidemics, and other causes beyond Borrower’s reasonable control.

“Foreign Lender” means (a) if Borrower is a U.S. Person, a Lender, with respect to such Borrower, that is not a U.S. Person, and (b) if Borrower is not a U.S. Person, a Lender, with respect to such Borrower, that is resident or organized under the laws of a jurisdiction other than that in which Borrower is resident for tax purposes.

“Future Commitment” has the meaning set forth in Section 10.10(d) hereof.

“GAAP” means generally accepted accounting principles in the United States of America.

“Governmental Approvals” means all approvals, consents, waivers, orders, acknowledgments, authorizations, permits, licenses and/or certificates of occupancy required under applicable Legal Requirements, or the Project Documents, to be obtained from each Governmental Authority having jurisdiction over the Facility and the construction and operation thereof for the construction of the Improvements and/or the use, occupancy and operation of the Improvements following completion of construction, as the context requires, including, without limitation, all land use, landmark, building, subdivision, zoning and similar ordinances and regulations promulgated by any Governmental Authority.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.
“Guarantor” means (i) each Principal, in respect of the Recourse Carve-Out Guaranty (Principals), (ii) each Principal, in respect of the Primary Completion Guaranty, (iii) each member of the Consortium, in respect of the Recourse Carve-Out Guaranty (Consortium), (iv) each hospital parent of each member of the Consortium, in respect of the Recourse Carve-Out Judgment Guaranty and (v) Facility Lessee, in respect of the Secondary Completion Guaranty.

“Hazardous Substances” means and includes all hazardous and toxic substances, wastes or materials, hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, urea formaldehyde insulation, radioactive materials, biological substances and any other kind and/or type of pollutants or contaminates (including, without limitation, asbestos and raw materials which include hazardous constituents), sewage sludge, industrial slag, solvents, toxin or mycotoxins and/or any other similar substances, or materials which are included under or regulated by any Environmental Laws; provided, however, that “Hazardous Substances” shall not include (a) materials customarily used in the construction and demolition of buildings, or (b) cleaning materials and office products customarily used in the operation of properties such as the Facility, to the extent such materials described in the preceding clauses (a) and (b) are stored, handled, used and disposed of in compliance with all Environmental Laws.

“Improvements” means the (a) improvements contemplated by the Plans and Specifications and to be constructed on the Land pursuant the Construction Contract, (b) all other improvements to be built or installed by Borrower, including, but not limited to, landscaping, striping, signage, trash compactors, curbing and lighting contemplated by the Plans and Specifications or otherwise required by any Governmental Authority, (c) all construction of the off-site improvements, including all off-site improvements required to be constructed by Borrower pursuant to the Project Documents, and (d) all other furniture, fixtures and equipment to be installed by Borrower contemplated by the Plans and Specifications in accordance with the Plans and Specifications therefor, all as any of the foregoing may be modified from time to time by reason of a modification to the Plans and Specifications in accordance with the terms of this Agreement. For the avoidance of doubt, the term “Improvements” does not include the Proton System or any work to be performed by the Proton System Supplier or by the Facility Lessee under the Proton System Purchase Agreement, Facility Lease or Building Interface Document.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, and (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity
“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitee” has the meaning set forth in Section 11.03(b) hereof.

“Independent Engineer” means Fulcrum Company, or any successor thereto selected by Administrative Agent.

“Ineligible Institution” has the meaning set forth in Section 11.04(b) hereof.

“Initial Advance” means the first Advance made in accordance with the terms hereof.

“Initial Party Agreement” means the Initial Party Agreement of even date herewith executed by and among the Consortium, Facility Lessee, Borrower and Collateral Agent.

“Interest Balancing Deposit” has the meaning set forth in Section 2.06(b) hereof.

“Interest Payment Date” means for each of the Senior First Lien Loans and Senior Second Lien Loans, the first (1st) day of each calendar month, (a) during the period commencing on the first such date to occur after the Closing Date and ending on and including 1st day of the calendar month first preceding the Facility Substantial Completion Date and (b) during the period commencing on the first (1st) day of the fourth full calendar month following the Facility Substantial Completion Date and ending on and including the Maturity Date of such Loan.

“Interest Period” means with respect to any Advance, the period commencing on the date of such Advance and ending on the last day of the calendar month of such Advance provided, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day.

“IRS” means the United States Internal Revenue Service.

“JPMorgan” has the meaning set forth in the preamble.

“Land” has the meaning set forth in the recitals.
“Land Acquisition Costs” means the “Purchase Price” payable under Section 2 the Contract of Sale and the additional consideration payable under Section 2(b) of the Contract of Sale.

“Leasehold Mortgage” means the Leasehold Mortgage, Security Agreement and Assignment of Leases and Rents of even date herewith executed by the Facility Lessee in favor of Borrower, and securing all of Facility Lessee’s obligations under the Facility Lease, Facility Lessee Loan and the other Project Documents and Loan Documents to which it is a party, as amended or otherwise modified from time to time.

“Legal Requirements” means, with respect to any Person, any and all judicial decisions, statutes, rulings, directions, rules, regulations, permits, certificates or ordinances of any Governmental Authority, including, without limitation, all Environmental Laws, in any way applicable to such Person or to its property, and, specifically in reference to Borrower, in any way applicable to Borrower or the Facility, including, without limitation, the ownership, division, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof.

“Lender Reply Period” has the meaning set forth in Section 10.09 hereof.

“Lenders” means Senior First Lien Lenders, Senior Second Lien Lenders and Subordinated Lenders.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Lien Law” has the meaning set forth in Section 3.12 hereof.

“Line Item” has the meaning set forth in Section 2.08 hereof.

“Loan” or “Loans” means, with respect to any Lender(s), any loans made by such Lender(s) pursuant to this Agreement (or any conversion or continuation thereof).

“Loan Collateral” means, collectively, the Borrower Collateral and the Borrower Member Collateral.

“Loan Documents” means this Agreement, the Notes, the Building Loan Mortgage, the Collateral Account Pledge Agreement, the Borrower Member Pledge Agreement, the Recourse Carve-Out Guaranty (Principals), the Recourse Carve-Out Guaranty (Consortium), the Recourse Carve-Out Judgment Guaranty, the Primary Completion Guaranty, the Secondary Completion Guaranty, the Initial Party Agreement, the Project Completion Agreement, the Environmental Indemnity Agreement, the Agreement Among Lenders, the Assignments and Consents, the Project Loan Agreement, the Project Loan Mortgage, the Other Assignments of Leases and Consent and the Project Loan Notes and any and all other documents now or hereafter executed by Borrower, any Guarantor or any other guarantor of the Obligations or any portion thereof evidencing, guarantying, securing or otherwise pertaining to the Obligations.
“Loan Party” means Borrower, each Guarantor, the Facility Lessee, the Borrower Managing Member, the Borrower Non-Managing Members and the Borrower Profit Participant.

“Make-Whole Fee” means, in connection with any prepayment principal or reduction in undrawn Commitment of any Senior First Lien Loan (other than to the Proton System Supplier in its capacity as a Senior First Lien Lender or any successor or assignee in such capacity) and Senior Second Lien Loan pursuant to Section 3.06, an amount equal to the sum of (A) in the case of any reduction in undrawn Commitment (other than a reduction after Substantial Completion of the Facility), the product of (1) 3.0% and (2) the reduction in undrawn Commitment of such Senior First Lien Lender or Senior Second Lien Lender, as the case may be, and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such prepayment to and including the Make-Whole Fee End Date, and the denominator of which is 360; and (B) in the case of prepayment of principal, the product of (1) the applicable Interest Rate pursuant to Section 3.04(a) and (2) the principal amount of such Senior First Lien Loan or Senior Second Lien Loan, as the case may be, that is being prepaid, and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such prepayment to and including the Make-Whole Fee End Date, and the denominator of which is 360. For the avoidance of doubt, no Make-Whole Fee is payable with respect to the Subordinated Loans.

“Make-Whole Fee End Date” means the fifth (5th) anniversary of the Closing Date.

“Material Adverse Effect” means any event, development or circumstance after the date hereof that materially impairs the ability of Borrower to perform its material Obligations under the Loan Documents (including events that jeopardize the development and/or the construction of the Improvements, the use, operation, or value of the Facility or on the validity or enforceability of any of the Loan Documents, or the rights and remedies of Lender thereunder or Borrower’s ability to perform its Obligations under the Loan Documents. Borrower acknowledges that a fact, event or circumstance that exists as of the date hereof that is not currently a Material Adverse Effect may, in the future, constitute a Material Adverse Effect upon the occurrence of further adverse facts or circumstances (e.g., a pending litigation action pertaining to the Facility may, following future adverse procedural or substantive trial developments, become a Material Adverse Effect).

“Material Default” means a payment Default under either of Sections 8.01(a) or (b) that persists for more than 30 days; a Default under Sections 8.01(r); or any other Default which, if not cured within a reasonable time, is likely to cause a Material Adverse Effect.

“Maturity Date” means (i) for the Senior First Lien Loans, July 15, 2021, (ii) for the Senior Second Lien Loans, January 15, 2022 and (iii) for the Subordinated Loans January 15, 2022.

“Maximum Rate” has the meaning set forth in Section 11.12 hereof.
“Mortgage” or “Building Loan Mortgage” means the Building Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith executed by Borrower in favor of Collateral Agent, for the benefit of the Secured Parties, as amended or otherwise modified from time to time.

“Mortgages” means the Building Loan Mortgage, the Project Loan Mortgage and the Leasehold Mortgage.

“Mortgaged Property” means all right, title and interest of Borrower in and to (i) the Facility, subject to the lien of the Building Loan Mortgage and the Project Loan Mortgage and (ii) the lien of the Leasehold Mortgage, as assigned to the Collateral Agent pursuant to the Assignment of Leasehold Mortgage and Consent.

“Net Casualty Proceeds” has the meaning set forth in Section 7.01(g)(ii) hereof.

“Net Condemnation Proceeds” has the meaning set forth in Section 7.02 hereof.

“Non-Defaulting Lender” means any Lender, as determined by Administrative Agent, that is not a Defaulting Lender.

“Non-Interest Balancing Deposit” has the meaning set forth in Section 2.06(b) hereof.

“Notes” means, collectively, the Senior First Lien Notes, the Senior Second Lien Notes and the Subordinated Notes.

“Obligations” means all unpaid principal of and accrued and unpaid interest on the Loans, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other indebtedness, liabilities, or obligations of Borrower to the Lenders or to any Lender, Administrative Agent, Collateral Agent, or any indemnified party arising under the Loan Documents, whether before or after the occurrence of a Bankruptcy Event with respect to Borrower and including any post-petition interest and funding losses, whether or not allowed or allowable in whole or in part as a claim in any proceeding arising in connection with such an event.

“OFAC” means Office of Foreign Assets Control of the United States Department of the Treasury.

“Operating Costs” means the costs and expenses for the operation and maintenance of the Facility.


“Operator Financing Statement” means the UCC financing statement covering the security interests in personal property granted by Operator to Facility Lessee and assigned to Borrower and further assigned to Collateral Agent for the benefit of the Secured Parties, in the Loan Documents for filing with the Secretary of State of the State of New York.
“Other Assignments of Leases and Consent” means each “Assignment of Leases and Consent” as defined in the Project Loan Agreement.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.11(b) hereof).

“Outside Improvements Substantial Completion Date” means, with respect to the Improvements, the 36 month anniversary of the Closing Date, as extended on account of Force Majeure Causes (up to a maximum of 90 days) or such other date consented to in writing by Administrative Agent pursuant to Section 4.02(a).

“Outside Facility Substantial Completion Date” means, with respect to the Facility, the 48 month anniversary of the Closing Date, as extended on account of Force Majeure Causes (up to a maximum of 90 days) or such other date consented to in writing by Administrative Agent pursuant to Section 4.02(a).

“Participant” has the meaning set forth in Section 11.04(c)(i) hereof.

“Participant Register” has the meaning set forth in Section 11.04(c)(i) hereof.

“Permits” means all permits, licenses, certificates and approvals now or hereafter issued to Borrower for the construction and operation of the Improvements.

“Permitted Encumbrances” means (a) Liens and security interests granted pursuant to the Loan Documents, (b) the items set forth on Schedule B of the Title Policy, (c) customary easements entered into by Borrower in connection with the development and operation of the Facility which Administrative Agent shall have consented to in writing if it has determined that such would have no Material Adverse Effect, and (d) documents required to be recorded by applicable law which have no Material Adverse Effect and consented to in writing by Administrative Agent.

“Permitted Indebtedness” means (i) the Obligations, (ii) the Facility Lessee Reverse Loan, and (iii) subordinated, unsecured loans made by a member or Borrower Profit Participant to Borrower in connection with capital calls under the Borrower’s Limited Liability Company Agreement or the agreement between Borrower Managing Member and Borrower Profit Participant, which loans shall be subordinated pursuant to terms and conditions set forth in a subordination agreement in form and substance satisfactory to the Administrative Agent.
“Permitted Transfer” means any of the following (a) with respect to the member interests of each Principal in M&M Proton I Investors, LLC, (i) any transfer from one Principal to the other Principal, or (ii) transfers by a Principal for estate planning purposes to family members (who are at least 21 years of age) or to a trust provided that in all events control of such member interest is retained by such Principal, (b) the lien created by the Borrower Member Pledge Agreement or any transfer pursuant thereto, (c) any transfer by M&M Proton I Investors, LLC of all its interests in Borrower to any Lender, to Facility Lessee or to or any nominee or designee of the foregoing pursuant to the Project Completion Agreement, or (d) any transfer of an interest in Borrower to a Person by or to Borrower Profit Participant or its transferee pursuant to the terms of the Operating Agreement of Borrower or pursuant to the Equity Participation Agreement between M&M Proton I Investors, LLC and Borrower Profit Participant, subject, however, to satisfaction of the following conditions:

(A) in the case of any transfer described in clause (d), prior to the earlier of the payment in full of the Senior Lien Notes and the “Loan Discharge Date” (as such term is defined in the Collateral Account Pledge Agreement), (i) Borrower Profit Participant and any Controlled Subsidiary shall at all times continue to own not less than 51% of and control over the rights afforded to the Borrower Profit Participant interest or direct “Company Equity” (such quoted term and all quoted terms used in this provision are defined in the Equity Participation Agreement) interest in Borrower if Borrower Profit Participant elects to convert its “Participation Rights” into Company Equity, and (ii) in the event that Borrower Profit Participant elects to remove MM Proton I Investors, LLC (or any successor thereto) as “Managing Member” of Borrower and to permit another member of Borrower to be the Managing Member (the “Successor Managing Member”) or to appoint a third party as a non-member manager of Borrower (a “Non-Member Manager”), such Successor Managing Member or such Non-Member Manager, as the case may be, and the terms of the agreement setting forth the Non-Member Manager’s engagement and duties if applicable, shall be subject to the prior written approval of Administrative Agent, not to be unreasonably withheld, conditioned or delayed, provided that notwithstanding anything herein to the contrary, nothing herein shall prohibit or restrict any sale or other transfer of Borrower Profit Participant interest or other equity interests in Borrower by Borrower Profit Participant to the extent required or requested by any Governmental Authority or to any Controlled Subsidiary;

(B) prior to the Facility Substantial Completion Date and for avoidance of doubt, MM Proton Investors I, LLC shall not be entitled to exercise any “Tag Along Rights” provided for in the Equity Participation Agreement;

(C) none of the “FF Holder Loans” or “Priority Loans” may be assigned, transferred or otherwise disposed of separately and independent of any permitted transfer of any Company Equity interest, “Participation Rights” or “Synthetic Rights”; and

(D) under no circumstances may Managing Member, Principals or any Affiliate of either acquire any Synthetic Rights under the Equity Participation Agreement without the prior written approval of Administrative Agent.
As used herein, “Controlled Subsidiaries” means any Subsidiary of The Goldman Sachs Group, Inc., a Delaware corporation.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan Assets” means the assets of an employee benefit plan within the meaning of 29 C.F.R. 2510.3-101.

“Plans and Specifications” means the final plans and specifications and working drawings with respect to the Improvements accepted by Administrative Agent, and all applicable Governmental Authorities, as modified and supplemented from time to time in accordance with the terms and provisions of this Agreement.

“Primary Completion Guaranty” means that Primary Completion Guaranty of even date herewith executed by the Principals in favor Collateral Agent, as amended or otherwise modified from time to time.

“Prime Rate” means the rate of interest per annum publicly announced from time to time by JPMorgan, as its prime rate; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective. The Prime Rate is a reference rate and is not necessarily the lowest rate.

“Principals” means [****] and [****].

“Project Budget” means the budget setting forth a Line Item and Cost Grouping breakdown of all Project Costs and all relevant assumptions, a copy of which is attached as Exhibit B to the Project Loan Agreement.

“Project Completion Agreement” means that certain Project Completion Agreement, dated the Closing Date, among Collateral Agent, the Principals, Borrower and Facility Lessee regarding the funding of cost overruns and drawing under the Primary Completion Guaranty and the Secondary Completion Guaranty.


“Project Documents” means the EDC Deed, the Facility Lease, the Sublease, the Leasehold Mortgage, the Construction Contract, the Architectural Services Agreement (Construction Administration), the Proton System Purchase Agreement, the Proton System Maintenance and Services Agreement, the Administrative Services Agreement, the Facility Lessee Operating Agreement and the Development Agreement and any other agreement relating to the ownership, financing, development or operation of the Facility to which Borrower or Facility Lessee is a party.

*Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
or beneficiary, whether now existing or hereafter arising; provided, however, that Project Documents shall not include the Loan Documents.

“Project Loan Agreement” has the meaning set forth in the Recitals.

“Project Loan Mortgage” means the “Mortgage” as defined in the Project Loan Agreement.

“Project Loan Notes” means the “Notes” as defined in the Project Loan Agreement.

“Project Party” means Contractor, Architect, Proton System Supplier, Operator, Consortium and Developer.

“Property” means, collectively, the Land, the Improvements now or hereafter erected thereon, together with all rights pertaining to such property and Improvements.

“Proton System” means “Varian Trade Fixtures” as defined in the Facility Lease and includes the proton therapy equipment and other equipment, systems and materials ancillary thereto, for four treatment rooms, delivered to and installed in the Improvements, pursuant to the Proton System Purchase Agreement.

“Proton System Balancing Deposit” has the meaning set forth in Section 2.06(b) hereof.

“Proton System Costs” means all amounts payable to Proton System Supplier pursuant to the Proton System Purchase Agreement.

“Proton System Operations and Maintenance Agreement” means that certain Proton System Operations and Maintenance Agreement, dated as of even date herewith, by and between Facility Lessee and Proton System Supplier, providing for the maintenance, servicing, repair and replacement of the Proton System.

“Proton System Purchase Agreement” means that certain Proton System Purchase Agreement, dated as of even date herewith, by and between Facility Lessee, Borrower and Proton System Supplier, for the design, engineering, manufacture, installation and commissioning of the Proton System, together with all exhibits, schedules and attachments thereto, including the Building Interface Document.

“Proton System Supplier” means Varian Medical Systems, Inc.

“Punch List Items” means, collectively, minor or insubstantial details of construction, decoration, mechanical adjustment or installation, which do not hinder or impede a certificate of completion to be issued by the appropriate Governmental Authority or the use, operation or maintenance of the Facility or the ability to obtain a certificate of completion or a permanent certificate of occupancy with respect thereto as determined by Administrative Agent.

“Qualified Financial Institution” means a financial institution with a long term corporate debt rating of at least “A” from Standard and Poor’s Rating Group or a comparable rating by a rating agency acceptable to Administrative Agent.
“Recipient” means (a) Administrative Agent, (b) Collateral Agent and (c) any Lender, as applicable.

“Recourse Carve-Out Guaranty (Consortium)” means that certain Member Guaranty of even date herewith executed by each member of the Consortium in favor of Collateral Agent, as amended or otherwise modified from time to time.

“Recourse Carve-Out Guaranty (Principals)” means that certain Bad Boy Guaranty ([****]*) of even date herewith executed by the Principals, in favor of Collateral Agent, as amended or otherwise modified from time to time.

“Recourse Carve-Out Judgment Guaranty” means that certain Parent Guaranty (Judgment) of even date herewith executed by the parent of each hospital member of the Consortium in favor of Collateral Agent, as amended or otherwise modified from time to time.

“Register” has the meaning set forth in Section 11.04(b)(iv) hereof.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“Report” has the meaning set forth in Section 4.16(a) hereof.

“Required Lenders” means Lenders constituting Required Senior First Lien Lenders and Required Second Lien Lenders, provided that after the occurrence and during the continuance of a Default or Unmatured Default, “Required Lenders” shall have the meaning set forth in the Agreement Among Lenders.

“Required Senior First Lien Lenders” means Senior First Lien Lenders (other than Defaulting Lenders) in the aggregate having at least 66 2/3% of the Aggregate Senior First Lien Loan Commitment or, if the Aggregate Senior First Lien Loan Commitment has been terminated, Senior First Lien Lenders in the aggregate holding at least 66 2/3% of the aggregate unpaid principal amount of the outstanding Advances by Senior First Lien Holders.

“Required Senior Second Lien Lenders” means Senior Second Lien Lenders (other than Defaulting Lenders) in the aggregate having at least 66 2/3% of the Aggregate Senior Second Lien Loan Commitment or, if the Aggregate Senior Second Lien Loan Commitment has been terminated, Senior Second Lien Lenders in the aggregate holding at least 66 2/3% of the aggregate unpaid principal amount of the outstanding Advances by Senior Second Lien Holders.

“Retainage” means, for the Construction Contract and each subcontract, the product of Retainage Percentage multiplied by the sum of all costs funded to the Contractor or the applicable subcontractor under the Construction Contract or the applicable subcontract until such time as the

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labor or materials provided under the Construction Contract or the applicable subcontract is complete as certified by the Independent Engineer.

“Retainage Percentage” means (a)(i) until the Improvements have reached 50% completion, as determined by the Independent Engineer, 10%, and (ii) after the Improvements have reached 50% completion, as determined by the Independent Engineer, 0% or (b) such higher amounts that may be required or permitted to be retained by Borrower under the Construction Contract.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, Sudan and Syria).

“Sanctions” means economic or financial sanctions or trade embargoes imposed by any order by the executive branch of the U.S. government or by any sanctions program administered or enforced from time to time by the U.S. government, including those administered by OFAC or the U.S. Department of State.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, or (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

“Secondary Completion Guaranty” means that certain Secondary Completion Guaranty of even date herewith executed by Facility Lessee in favor of Collateral Agent, as amended or otherwise modified from time to time.

“Secured Parties” means the Administrative Agent, the Lenders and the Collateral Agent.

“Security Filings” means the following filings, or commitments to effect filings, on or before the Closing Date:

1. The final pro forma by the Title Company to issue the Title Policy in all respects satisfactory to the Administrative Agent, or the Title Policy issued by the Title Company, and commitment to promptly effect the following filings (or memoranda), in the order listed, in the appropriate real property records of New York City:

a. the EDC Deed;

b. a memorandum of Facility Lease;

c. a memorandum of Sublease;

d. the Facility Lease;

e. the Leasehold Mortgage;

f. the Assignment of Leasehold Mortgage and Consent;

g. the Building Loan Mortgage; and
h. the Project Loan Mortgage;
2. The Borrower Financing Statement;
3. The Facility Lessee Financing Statement;
4. The Operator Financing Statement; and
5. The Borrower Member Financing Statement.

“Senior First Lien Lenders” means the Persons listed on Schedule 1.01 as Senior First Lien Lenders and any other Person that shall have become a party hereto as a Senior First Lien Lender pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Senior First Lien Loan” means any Loan made by a Senior First Lien Lender pursuant to Section 2.01(b)(i) hereof.

“Senior First Lien Notes” means the Promissory Notes executed by Borrower in favor of each of the Senior First Lien Lenders, substantially in the form of Exhibit C-1 hereto, as amended or otherwise modified from time to time.

“Senior Second Lien Lender” means each of the Persons listed on Schedule 1.01 as a Senior Second Lien Lender and any other Person that shall have become a party hereto as a Senior Second Lien Lender pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Senior Second Lien Loan” means any Loan made by a Senior Second Lien Lender pursuant to Section 2.01(b)(ii) hereof.

“Senior Second Lien Notes” means each Promissory Note executed by Borrower in favor of a Senior Second Lien Lender, substantially in the form of Exhibit C-2 hereto, as amended or otherwise modified from time to time.

“SFIP” has the meaning set forth in Section 7.01(a)(vi) hereof.

“Soft Costs” means those costs associated with the development, construction, marketing, leasing, operation and maintenance of the Improvements which are not Land Acquisition Costs or Building Costs, including, without limitation, the Facility Lessee Loan, repayment of the Facility Lessee Reverse Loan in respect of proceeds thereof used to pay Soft Costs and Land Acquisition Costs, the Developer Fee, architectural and engineering fees, consultant fees, professional fees, marketing fees and expenses, real estate taxes, insurance and bonding costs, interest and financing fees and any other items identified as “Soft Costs” in the Project Budget.
"Stored Materials" has the meaning set forth in Section 2.11 hereof.

"Sublease" means that certain Sublease, dated as of even date herewith, between Facility Lessee, as sublessor, and Operator, as sublessee, of the Facility.

"Subordinated Lenders" means the Persons listed on Schedule 1.01 as Subordinated Lenders and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

"Subordinated Loan" means any Loan made by a Subordinated Lender pursuant to Section 2.01 hereof.

"Subordinated Notes" means the Promissory Notes executed by Borrower in favor of each of the Subordinated Lenders, substantially in the form of Exhibit C-3 hereto.

"Substantially Complete", "Substantially Completed" or "Substantial Completion" means, (a) with respect to the Improvements, the “Land and Building Improvements Substantial Completion” has occurred with respect to the “Land and Building Improvements”, as each such term is defined in the Work Letter, and (b) with respect to the Facility, “Proton Treatment Room Substantial Completion” has occurred with respect to all four “Proton Treatment Rooms”, as such term is defined in the Work Letter.

"Supplemental Capital Contribution Obligation" means the obligation of Consortium to fund up to $25,000,000 in support, inter alia, of the Secondary Completion Guaranty and $12,000,000 in working capital for Facility Lessee pursuant to the Facility Lessee Operating Agreement.

"Survey" has the meaning set forth in Section 2.03(c)(iii) hereof.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Title Company" means, collectively, Chicago Title Insurance Company, Fidelity National Title Insurance Company, and First American Title Insurance Company, with each issuing a Title Policy for 1/3 of the total commitment on a coinsurance basis.

"Title Policy" means, with respect to each Title Company, in respect of its commitment:

1. with respect to the Building Loan Mortgage an ALTA Lender’s Policy of Title Insurance in form and substance satisfactory to Administrative Agent issued by the Title Company in the amount of the Aggregate Loan Commitment under this Agreement insuring the Building Loan Mortgage as a first priority lien on the Facility, containing such endorsements as Administrative Agent may request, excepting only such items as shall be acceptable to Administrative Agent,

2. with respect to the Project Loan Mortgage an ALTA Lender’s Policy of Title Insurance in form and substance satisfactory to Administrative Agent issued by the Title Company
in the amount of the Aggregate Loan Commitment under the Project Loan insuring the Project Loan Mortgage as a second priority lien on the Facility, containing such endorsements as Administrative Agent may request, excepting only such items as shall be acceptable to Administrative Agent, and

3. with respect to the Leasehold Mortgage an ALTA Lender’s Policy of Title Insurance in form and substance satisfactory to Collateral Agent issued by the Title Company in the amount of the Aggregate Loan Commitment under this Agreement and the Project Loan Agreement insuring the Leasehold Mortgage as a first priority lien on the leasehold interests of Facility Lessee in Facility, containing such endorsements as Administrative Agent may request, excepting only such items as shall be acceptable to Administrative Agent.

“Unmatured Default” means the occurrence of an event which with notice or lapse of time or both would constitute a Default.

“U.S. Person” means a “United States person” within the meaning of section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 3.09(f)(ii)(B)(3) hereof.

“Work Letter” means the Work Letter between Borrower and Facility Lessee, attached as Exhibit B to the Facility Lease, which provides for the responsibilities, as between Borrower and Facility Lessee, for the engineering, procurement and construction of the Improvements and installation of the Proton System.

1.02 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any right or interest in or to assets and properties of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

1.03 Accounting and Other Terms. All terms used in this Agreement which are defined in Article 8 or Article 9 of the Uniform Commercial Code as in effect from time to time in the State of New York (the “Uniform Commercial Code” or the “UCC”) and which are not otherwise defined herein shall have the same meanings herein as set forth therein, provided that terms used herein which are defined in the Uniform Commercial Code as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as any Agent may otherwise determine. Unless otherwise
indicated herein, all references to time of day refer to Eastern Standard Time or Eastern daylight saving time, as in effect in New York City on such day.

ARTICLE II
CONDITIONS TO DISBURSEMENTS

2.01 Right to Advances, Generally.

(a) Each Lender severally agrees, on the terms and conditions set forth in this Agreement, to make Loans to Borrower from time to time in amounts not to exceed in the aggregate the amount of its Commitment. Each Lender shall make Advances to pay accrued interest on the Senior First Lien Loans and Senior Second Lien Loans, as provided in Section 2.08. In addition, each Lender shall make Advances pursuant a request for an Advance by Borrower pursuant to Section 3.02, and satisfaction of the conditions provided herein.

(b) Borrower acknowledges that the aggregate Commitment of the Lenders under this Agreement and the Project Loan Agreement shall not exceed (i) in the case of the Senior First Lien Lenders, the sum of the Aggregate Senior First Lien Commitment hereunder and under the Project Loan Agreement, (ii) in the case of the Senior Second Lien Lenders, the sum of the Aggregate Senior Second Lien Commitment hereunder and under the Project Loan Agreement, and (iii) in the case of the Subordinated Lender, the sum of the Aggregate Subordinated Loan Commitment hereunder and under the Project Loan Agreement. At Borrower’s request, the Lenders agree to consider adjustments to their commitment under this Agreement and the Project Loan Agreement so that the previous sentence remains correct and the relative priorities of the Aggregate Senior First Lien Loan Commitment and the Aggregate Senior Second Lien Loan Commitment under this Agreement or the Project Loan Agreement do not change; provided that in no event shall any Lender be obligated to make any adjustment in their commitment under this Agreement.

(c) Each Advance hereunder, including Advances to pay interest on the Senior First Lien Loans and Senior Second Lien Loan pursuant to Section 2.08, hereunder shall consist of Loans solely from the Subordinated Lender until such time as the Subordinated Lender shall have fully funded the Aggregate Subordinated Loan Commitment hereunder and the Aggregated Subordinated Loan Commitment under the Project Loan Agreement and, thereafter, of Senior First Lien Loans and Senior Second Lien Loans ratably in proportion to the ratio that the Aggregate Senior First Lien Loan Commitment bears to the Aggregate Senior Second Lien Loan Commitment, with (i) such Senior First Lien Loans made by the Senior First Lien Lenders ratably in proportion to their Applicable Percentage, and (ii) such Senior Second Lien Loans made by the Senior Second Lien Lenders ratably in proportion to their Applicable Percentage.

(d) No Lender shall be responsible for the failure of any other Lender to perform its obligations to make Loans hereunder, and the Commitment of any Lender shall not be increased or decreased as a result of the failure by any other Lender to perform its obligation to make Loans hereunder.

(e) Borrower agrees to cause the proceeds of each Advance to be applied for the Building Costs specified in the applicable Draw Package and approved for disbursement and for no other purposes. No Advance shall be applied by Borrower to reimburse itself for any costs previously
funded with or credited to Borrower’s Initial Equity Requirement or costs funded with any Balancing Deposit.

(f) Notwithstanding any provision of this Agreement to the contrary, the Commitments of each Lender shall terminate if the Initial Advance is not made on or before September 30, 2015, and unless earlier terminated pursuant to the terms hereof, shall expire, and all remaining and unfunded Commitments of the Lenders terminate, on the earlier of (i) the making of the final Advance upon Completion of the Facility pursuant to Section 2.10 and (ii) the Outside Facility Substantial Completion Date.

2.02 Closing Date Transactions. On the Closing Date, the following transaction shall occur:

(a) Borrower, the Lenders, Collateral Agent and Administrative Agent shall enter into each of the Loan Documents to which it is a party;

(b) Borrower, Facility Lessee and each of the Project Parties shall enter into each of the Project Documents to which it is a party;

(c) The Principals shall have contributed to Borrower cash equity in an amount not less than Borrower’s Initial Equity Requirement and such funds shall have either (i) been disbursed in payment of Project Costs, as evidenced to the satisfaction of Administrative Agent, or (ii) deposited with Collateral Agent for disbursement in payment of Project Costs;

(d) Facility Lessee shall make the Facility Lessee Project Cost Advance to Collateral Agent;

(e) Lenders shall make the Initial Advance hereunder and under the Other Loan Documents, if applicable, to Collateral Agent;

(f) EDC shall have conveyed the Land to Borrower pursuant to the EDC Deed and Collateral Agent shall then disburse to EDC the balance of the monies due to the seller under the Contract of Sale;

(g) Borrower shall have leased the Property to Facility Lessee pursuant to the Facility Lease;

(h) Collateral Agent shall make, as directed by Borrower, such other payments as are then due from the proceeds of the Initial Advance and Facility Lessee Project Cost Advance in accordance with this Agreement; and

(i) Borrower shall pay to Administrative Agent and each Lender all fees and reimbursement of expenses due hereunder.
2.03 Conditions to Closing and Initial Advance. Borrower agrees that, in addition to all other conditions set forth herein, the making of the Initial Advance is conditioned upon satisfaction by Administrative Agent and the Lenders that the following conditions precedent have been satisfied in full (i) the consummation on the Closing Date of each of the transactions described in Section 2.02 hereof and (ii) the fulfillment of each of the conditions described in this Section 2.03 on the Closing Date, subject, however, to the right of Administrative Agent to waive any one or more of such conditions in whole or in part:

(a) Loan Documents and Certain Third Party Documents. Administrative Agent shall have received on or prior to the date of the Initial Advance the following documents fully executed and in form and substance satisfactory to Administrative Agent, all of which shall be in full force and effect:

(i) the Notes (with originals delivered to the applicable Lender);
(ii) the Mortgage;
(iii) the Assignment of Leases and Consent;
(iv) the Project Loan Agreement;
(v) the Project Loan Notes;
(vi) the Project Loan Mortgage;
(vii) the Other Assignments of Leases and Consent;
(viii) the Facility Lease;
(ix) the Memorandum of Lease;
(x) the Sublease;
(xi) the Memorandum of Sublease.
(xii) the Facility Lessee Loan and Security Agreement;
(xiii) the Leasehold Mortgage;
(xiv) the Assignment of Leasehold Mortgage and Consent;
(xv) the Collateral Account Pledge Agreement:
(xvi) the Borrower Member Pledge Agreement (with the membership certificate duly endorsed and delivered to Collateral Agent);
(xvii) the Recourse Carve-Out Guaranty (Principals);
(xviii) the Recourse Carve-Out Guaranty (Consortium);
(xix) the Recourse Carve-Out Judgment Guaranty;
(xx) the Primary Completion Guaranty;
(xxi) the Project Completion Agreement;
(xxii) the Secondary Completion Guaranty;
(xxiii) the Initial Party Agreement;
(xxiv) the Permanent Party Agreement;
(xxv) the Environmental Indemnity Agreement;
(xxvi) the Contract of Sale, together with the Assignment of Contract;
(xxvii) the EDC Deed;
(xxviii) the Borrower Estoppel;
(xxix) the Assignment of Architectural Services Agreement (Construction Administration) and Consent (attaching a copy of the Architectural Services Agreement (Construction Administration));

(xxx) Assignment of Architectural Services Agreement (Design) and Consent (attaching a copy of the Architectural Services Agreement (Design));

(xxxi) the Assignment of Construction Contract and Consent (attaching a copy of the Construction Contract);

(xxxii) the Assignment of Proton System Agreements and Consent (attaching a copy of the Proton System Purchase Agreement and Proton System Operations and Maintenance Agreement);

(xxxiii) the Assignment of Leases and Rents (Facility Lessee) and Consent;

(xxxiv) the Assignment of Facility Lessee Operating Agreement and Consent (attaching a copy of the Facility Lessee Operating Agreement);

(xxxv) the Borrower Financing Statement;

(xxxvi) the Facility Lessee Financing Statement;

(xxxvii) the Operator Financing Statement;

(xxxviii) the Development Agreement; and

(xxxix) the Assignment and Subordination of Development Agreement and Consent.
(b) Security Filings.

(i) Current UCC, tax, lien and judgment searches made in such places as Administrative Agent may specify, covering Borrower, Facility Lessee, Borrower Managing Member and Borrower Profit Participant and showing no filings relating to, or which could relate to, any of the Borrower Collateral, the Borrower Member Collateral or the Facility Lessee Collateral other than those made hereunder; and

(ii) All Security Filings shall have been made or, in the case of the Title Policy, Administrative Agent shall have received a final pro forma to issue the Title Policy or the issued Title Policy, in all respects satisfactory to the Administrative Agent, together with copies of all documentation evidencing exceptions raised therein.

(c) Additional Closing Deliveries. Administrative Agent shall have received the following on or before the date of the Initial Advance in form and substance satisfactory to Administrative Agent:

(i) Evidence of the insurance required under Section 7.01 hereof;

(ii) An ALTA survey of the Land certified in a manner acceptable to Administrative Agent and which includes an appropriate professional seal (the “Survey”);

(iii) An Appraisal, satisfactory to Administrative Agent;

(iv) With respect to each of (1) Borrower, (2) Facility Lessee, (3) each Guarantor (other than the hospital parent of each member of the Consortium), (4) the Borrower Managing Member, (5) the Borrower Profit Participant, (6) Contractor, (7) Architect, (8) Proton System Supplier, (9) Facility Lessee Manager, and (10) the Consortium, a certificate of a secretary or assistant secretary or comparable officer of such Person certifying as to (x) the organizational documents for such Person, (y) the authorizing resolutions of such Person and (z) incumbency and specimen signatures of signatories for such Person, together with (A) a copy of the organizational documents for such Person, each certified by the Secretary of State of the state of its formation as of a recent date, (B) certificates of good standing and authority to do business as a foreign entity, as applicable, as of a recent date for such Person from such Secretary of State and from the Secretary of State of any such foreign jurisdiction, as applicable;

(v) A copy of the Contract of Sale, together with all Exhibits thereto, and the related closing statement, certified as true, correct and complete by Borrower;

(vi) Evidence indicating whether the Land is located within a one hundred year flood plain or identified as a special flood hazard area as defined by the Federal Emergency Management Agency, and, if so, a flood notification form signed by Borrower and evidence that flood insurance is in place for the building and contents, all in form and substance satisfactory to Administrative Agent;

(vii) An environmental report or reports with respect to the Land prepared by an environmental consultant acceptable to Administrative Agent and which report or
reports indicate that there has been no change in the condition of the Land from that described in the Report;

(viii) Evidence indicating compliance by the Improvements with applicable zoning requirements (without requirement for a variance) and the Contract of Sale, including an opinion of counsel regarding zoning in form and scope satisfactory to Administrative Agent;

(ix) If requested by the Administrative Agent, an Architect’s Certificate;

(x) Evidence that all utilities and municipal services required for the construction and operation of the Facility are available at the Property;

(xi) The most recent available financial statements of Borrower, Facility Lessee and each Principal in the form of financial statement required pursuant to this Agreement;

(xii) A Certification of Non-Foreign Status;

(xiii) A signed IRS Form W-8 or W-9 as applicable;

(xiv) All notices required by any Governmental Authority or by any applicable Legal Requirement to be filed prior to commencement of construction of the Improvements shall have been filed;

(xv) Administrative Agent, in its reasonable discretion, shall have received and approved evidence of the quality of the Borrower’s project management team (experience and number of employees and shall be satisfied that the members of such team can reasonably be expected to remain on such team through the Completion of the Facility), it being agreed that the list of individuals set forth on Exhibit J has been approved by Administrative Agent;

(xvi) Borrower shall have caused the Title Company or some other escrow agent reasonably acceptable to Administrative Agent to enter into a disbursement agreement reasonably acceptable to Administrative Agent by and among Borrower, Administrative Agent and the Title Company (or some other escrow agent reasonably acceptable to Administrative Agent);

(xvii) The Zoning Lot Development Agreement relating to the Property;

(xviii) Such other information and documents as Administrative Agent may require; and

(xix) there shall not have occurred any change, event or condition after the Closing Date that had or is reasonably likely to have a Material Adverse Effect.

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(d) **Construction Documents.** Administrative Agent shall have received the following on or before the date of the Initial Advance in form and substance satisfactory to Administrative Agent:

(i) The Plans and Specifications;

(ii) A plan and cost review report from the Independent Engineer;

(iii) The Construction Schedule;

(iv) Sub-guard insurance in respect of each subcontractor equal to 100% of the value of the subcontract (or if not covered by sub-guard insurance, original payment and performance bonds covering such sub-contractor), in each case from insurance and bonding companies satisfactory to Administrative Agent, containing a dual obligee rider naming Collateral Agent as an obligee, for the benefit of the Secured Parties and a financial interests endorsement for sub-guard insurance;

(v) Copies of all permits, certificates, licenses and approvals required under all applicable Legal Requirements for the construction of the Improvements and installation of the Proton System, to the extent required and available as of such Initial Advance;

(vi) A copy of the executed Construction Contract and, to the extent necessary as determined by Administrative Agent in its reasonable discretion, a schedule, certified by Borrower showing (A) all subcontracts relating to the Construction Contract awarded as of the date of the Initial Advance, including names, types of work, subcontract amounts and percentage retainage provided in said subcontracts, (B) the amount of general conditions and an estimate of value for each subcontract not awarded as of such date, and (C) a total overall schedule of values;

(vii) Copies of such financial statements of Contractor as Administrative Agent may reasonably require, including balance sheets and profit and loss statements;

(viii) A copy of the standard form of subcontract to be used by Contractor, which form shall not prohibit an assignment of the Construction Contract to Administrative Agent or require the Contractor’s consent thereto and shall be used for all subcontracts relating to the Construction Contract;

(ix) A copy of the executed Proton System Purchase Agreement and, to the extent necessary as determined by Administrative Agent in its reasonable discretion, a schedule showing, if any, all subcontracts awarded as of the date of the Initial Advance, including names, types of work, subcontract amounts and percentage retainage provided in said subcontract;

(x) With respect to any subcontractor who is not subject to the Contractor’s sub-guard insurance program, a copy of the financial statements of such subcontractor, including balance sheets and profit and loss statements;
(xi) If applicable, a copy of the standard form of subcontract to be used by Proton System Supplier, which form shall not prohibit an assignment to Administrative Agent or require the Proton System Supplier’s consent thereto and shall be used for all subcontracts relating to the Proton System Purchase Agreement;

(xii) A copy of the Building Interface Document, executed by both Contractor and Proton System Supplier;

(xiii) A site plan depicting the placement of the Improvements on the Land, verifying that all of the Improvements will be within the lot lines of the Land and in compliance with all set back requirements, in a form acceptable to Administrative Agent;

(xiv) Intentionally Omitted;

(xv) Evidence that the proceeds of the Loans will be sufficient to cover all Project Costs reasonably anticipated to be incurred and to satisfy the Obligations of Borrower under this Agreement; and

(xvi) Such additional documents and information relating to the design and construction of the Improvements and installation of the Proton System as reasonably required by Administrative Agent.

(e) **Fees and Expenses.** All fees and reimbursement of expenses due Administrative Agent and the Lenders on the date of the Initial Advance (including, without limitation, Administrative Agent’s and each Lender’s attorneys’ fees and expenses) shall be paid prior to or out of the Initial Advance.

(f) **Other Documents.** Such other information, documents, certificates and opinions as Administrative Agent or any of the Lenders may reasonably require.

2.04 **Conditions to All Advances.**

Without limitation of any other provision of this Agreement, the making of each Advance, or the withdrawal of funds previously advanced and deposited into a Construction Account under the Collateral Account Pledge Agreement, is conditioned upon fulfillment of each of the conditions set forth in this Section 2.04, subject, however, in each case, to the right of Administrative Agent to waive any one or more of such conditions in whole or in part. Collateral Agent shall make the requested Advance within five (5) Business Days after satisfaction or waiver of such conditions.

(a) **Draw Package.** Administrative Agent shall have received the following in form and substance satisfactory to Administrative Agent (collectively, a “**Draw Package**”) at least 10 Business Days prior to the date of the requested Advance, which Draw Package shall be posted on an Electronic System accessible by the Lenders:

(i) a request in the form attached hereto as **Exhibit I** (a “**Draw Request**”) or as otherwise approved by Administrative Agent;
(ii) if applicable, as determined by Administrative Agent, a draw request certification from Contractor covering all or a portion of the requested Advance in the form of AIA Form G702 and G703 or an equivalent form acceptable to Administrative Agent (with Contractor’s sworn statement and application for payment attached thereto);

(iii) if applicable, as determined by Administrative Agent, a completed AIA Form G706 (Contractor’s Affidavit of Payment of Debts and Claims);

(iv) if applicable, as determined by Administrative Agent, a draw request certification from Proton System Supplier covering all or a portion of the requested Advance in a form acceptable to Administrative Agent (with Proton System Supplier’s sworn statement and application for payment attached thereto);

(v) duly executed lien waivers, satisfactory to Administrative Agent, from the Contractor for all work performed and all labor or material supplied for which payment thereof has been made prior to the date of the Initial Advance;

(vi) a list of Project Costs to be paid pursuant to the Draw Request, and, in the case of Soft Costs, copies of invoices for each item of Soft Costs certified by Borrower that such Project Costs is[are] in compliance with the Project Budget; 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 the Draw Request. The cost breakdown shall also show the percentage of completion of each Line Item on the Project Budget, and the accuracy of the cost breakdown shall be certified by Borrower. All such applications for payment shall also show all contractors, including subcontracts, by name and trade, the total amount of each 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 subcontractor;

(vii) copies of the then current and pending change order(s) and request for information logs, which shall be made available to the Independent Engineer for review in accordance with Section 4.04 hereof;

(viii) to the extent not previously delivered to Administrative Agent, copies of all Governmental Approvals necessary for the construction of the Improvements in accordance with the Plans and Specifications as of the date of the requested Advance, including without limitation, all building permits then required for the stage of construction of the Improvements, together with a certificate from Borrower certifying (A) a list of all Governmental Approvals obtained through such date, (B) that all Governmental Approvals are in full force and effect and all conditions precedent to the effectiveness thereof have been satisfied and (C) a list, to Borrower’s knowledge, of Governmental Approvals required through final completion;

(ix) a list of all subcontracts, certified by Borrower, to Borrower’s knowledge, together with contact information for all subcontractors and the total amount of each subcontract along with copies of all subcontracts under the Construction Contract; and
additional documentation as reasonably requested by Administrative Agent.

(b) **Prior Conditions Satisfied.** All conditions precedent to the Initial Advance and any prior Advance (in the same manner in which they were satisfied for the Initial Advance or such prior Advance, as applicable, and without reimposing any one time requirement) shall continue to be satisfied as of the date of such subsequent Advance.

(c) **Loan Documents.** All Loan Documents shall be in full force and effect.

(d) **No Damage.** The Improvements shall not have been damaged by fire, explosion, accident, flood or other casualty, unless Administrative Agent shall have received insurance proceeds sufficient in the reasonable judgment of Administrative Agent (or Borrower shall have deposited with Administrative Agent such amount) to permit the Substantial Completion of the Facility to occur no later than the Outside Facility Substantial Completion Date.

(e) **No Material Adverse Effect.** No change, event or condition shall have occurred since the prior Advance that had or is reasonably likely to have a Material Adverse Effect.

(f) **Financial Condition.** Administrative Agent shall have received the financial statements of Borrower, Facility Lessee and each Principal required under Section 4.15 of this Agreement.

(g) **Status Schedule.** Administrative Agent shall have received a schedule, which be on AIA Form G703, detailing (A) each Line Item of the Project Budget, including all Building Costs and Soft Costs, (B) the percentage of completion of each Line Item, (C) the amount of the Loans drawn to date for each Line Item, (D) the amount of the Loans remaining to be drawn for each Line Item, and (E) any expected budget variances for each Line Item.

(h) **Anticipated Cost Report.** Borrower shall submit to Administrative Agent a report provided by Contractor, in form satisfactory to Administrative Agent which indicates the costs anticipated to achieve Completion of the Facility, after giving effect to costs incurred during the previous month and projected costs.

(i) **Borrowing Request.** Administrative Agent shall have received a Draw Package in accordance with the provisions of Section 2.04(a) hereof.

(j) **Independent Engineer’s Report.** Administrative Agent shall have received a report from the Independent Engineer approving the subject Draw Package, which shall include, without limitation, Independent Engineer’s determination based on on-site inspections of the Improvements and the data submitted to and reviewed by it as part of Borrower’s Draw Request of the value of the labor and materials in place, (i) for the Initial Advance only, indicate its review and acceptance of the Plans and Specifications and the Construction Contract; (ii) that the construction of the Improvements is proceeding according to the Construction Schedule and that the work on account of which the Advance is sought has been completed in a good and workmanlike manner to such Independent Engineer’s satisfaction within the Project Budget and substantially in accordance with the Plans and Specifications and (iii) state its estimate of (A) the percentages of the construction of the Improvements completed as of the date of such site observation on the basis of work in place
as part of the Improvements and the Project Budget, (B) the Building Costs actually incurred for work in place as part of the Improvements as of the date of such site observation, (C) the sum necessary to achieve Completion of the Facility in accordance with the Plans and Specifications; and (D) the amount of time from the date of such inspection that will be required to achieve Completion of the Facility.

(k) Title Endorsements. Administrative Agent shall have received a commitment from the Title Company to issue a bring-down endorsement to the Title Policy in form and substance satisfactory to Administrative Agent, extending and increasing the coverage to include the date and the amount of the requested Advance, together with such other endorsements required by Administrative Agent to continue to insure the Lien of the Mortgage as a prior and paramount Lien on the Mortgaged Property subject only the Permitted Encumbrances and any other matter approved by Administrative Agent in writing. Administrative Agent shall have also received any endorsement required by Section 4.02(b) hereof.

(l) Loans In Balance. The Loans shall be “in balance” as determined by Administrative Agent in accordance with Section 2.06 hereof.

(m) Insurance. All insurance required by Section 7.01 of this Agreement shall be in full force and effect.

(n) Certification Regarding Chattels. Administrative Agent shall have received a certification from the Title Company or other service satisfactory to Administrative Agent or counsel satisfactory to Administrative Agent (which shall be updated from time to time at Borrower’s expense upon request by Administrative Agent in connection with future Advances) that a search of the public records disclosed no significant or material changes since the Closing Date, including no judgment or tax liens affecting Borrower, the Principals or the Facility Lessee, the Mortgaged Property, or the Facility, and no conditional sales contracts, chattel mortgages, leases of personality, financing statements (other than those in favor of Administrative Agent or permitted by the Facility Lease and/or Leasehold Mortgage) or title retention agreements which affect the Facility.

(o) Changes in Requirements. A written statement from Borrower to Administrative Agent detailing any change in special requirements of any Governmental Authority with respect to the Facility, known or contemplated by the Borrower, which have been or will be imposed by such Governmental Authority as a condition to the approval of the Facility or the construction thereof, together with an explanation of the manner in which Borrower intends to comply with such requirements;

(p) No Default or Unmatured Default. No Default or Unmatured Default shall have occurred and be continuing.

(q) Representations and Warranties. The representations and warranties made hereunder or under any of the other Loan Documents, or in any certificate or other document executed by Borrower, any other Loan Party or any Project Party and delivered to Administrative Agent pursuant to or in connection with this Agreement, shall be true and correct in all material respects as of the applicable Borrowing Date except to the extent any such representation or warranty is made as of
a specified date, in which case such representation or warranty shall have been true and correct on and as of such specified date.

(r) **Payment of Fees.** Borrower shall have paid all fees and expenses required by this Agreement, to the extent then due and payable, including, without limitation, Administrative Agent’s and the Lenders’ reasonable attorneys’ fees and expenses.

(s) **Lender Disbursements.** Administrative Agent shall have received from each Lender such Lender’s pro rata share of such Advance.

Each Draw Package submitted by Borrower shall constitute a representation and warranty by Borrower that, except as otherwise specifically disclosed in such Draw Package and labeled as a “Disclosure” (a “Disclosure”): (i) to the best of Borrower’s knowledge, Borrower is in compliance with all of the conditions to the applicable Advance set forth in this Agreement, (ii) all representations and warranties made hereunder or under any of the Loan Documents, or in any certificate or other document executed by Borrower, each Guarantor, or to the best of Borrower’s knowledge any other Loan Party or Project Party as the case may be, and delivered to Administrative Agent pursuant to or in connection with this Agreement, are true and correct in all material respects as of the applicable Borrowing Date except to the extent such representation and warranty is made as of a specified date, in which case such representation and warranty shall have been true and correct on and as of such specified date, (iii) to the best of Borrower’s knowledge, no Default or Unmatured Default exists as of the applicable Borrowing Date, (iv) any completed construction is substantially in accordance with the Plans and Specifications, (v) all costs for the payment of which the Lenders have previously advanced funds have in fact been paid to the appropriate vendors and (vi) to the best of Borrower’s knowledge, Borrower continues to be in compliance in all material respects with all of the terms, covenants and conditions contained in this Agreement. If Administrative Agent elects to make an Advance notwithstanding matters which are the subject of a Disclosure, the waiver of such matters shall be effective for that Advance only, and unless subsequently waived, such matters must be corrected before the next Advance.

2.05 **Disbursements.**

(a) **Generally.** Administrative Agent will make such Loans available to Borrower by promptly crediting the amounts so received, in like funds, to the Borrower Operating Account maintained with Collateral Agent, unless the Administrative Agent determines to direct funds to the applicable Borrower Construction Account maintained with the Collateral Agent.

(b) **Loan Disbursements.** Borrower agrees to pay all fees and expenses of Collateral Agent charged in connection with the performance of its duties under such Collateral Account Pledge Agreement. Advances deposited by or on behalf of the Lenders into the Borrower Operating Account or to a Construction Account established by the Collateral Account Pledge Agreement shall be deemed fully made to Borrower on the date of such deposit.

(c) **Lessee Project Costs.** The Facility Lessee Project Cost Advance, the repayment of the Facility Lessee Reverse Loan and the proceeds of any advance by Borrower on the Facility Lessee Loan shall be deposited into the Facility Lessee Construction Account pursuant to the provisions of the Collateral Account Pledge Agreement. Amounts deposited into the Facility Lessee
Construction Account established by the Collateral Account Pledge Agreement shall be deemed fully made to Facility Lessee on the date of such deposit; and such amounts shall be disbursed by Collateral Agent directly to Proton System Supplier as directed in the Draw Package.

(d) **Monthly Advances; Minimum Amounts.** Other than disbursements to pay interest on the Senior First Lien Loans or interest on the Senior Second Lien Loans, Advances will not be made more frequently than monthly.

(e) **Amounts of Advances.** In no event shall any Advance exceed the full amount of Project Costs theretofore paid or incurred by Borrower through the date of the Draw Request for such Advance minus (i) the aggregate applicable Retainage to the extent not previously released pursuant to clause (ii) below and (ii) the aggregate amount of any Advances previously made by the Lenders. In no event shall any Advance, except the final Advance, be for an amount which is less than $250,000.

(f) **Retainage.** Retainage shall be advanced on a subcontract by subcontract basis prior to Completion of the Facility but after final completion of all construction work provided for under such subcontract, subject to approval thereof by the Independent Engineer and receipt by Administrative Agent of final unconditional lien waiver(s) (subject only to receipt of payment) for said subcontract (showing no disputed claims) and other reasonable, appropriate close-out information.

(g) **No Deemed Approval.** No Advance of the Loans by the Lenders shall be deemed to be an approval or acceptance by Administrative Agent or the Lenders of any work performed thereon or the materials furnished with respect thereto.

2.06 **Balancing.**

(a) **“In Balance” Determination.** Advances shall only be made at such times as the Loans are “in balance”. The Loans shall be deemed to be “in balance” only at such times as Administrative Agent determines (i) that (A) amounts available for disbursement under the Loan Documents for Project Costs (including from non-interest contingency items) other than interest on the Loans (determined after deducting the allocated amount of any Defaulting Lender’s Commitment) together with (B) available undisbursed Non-Interest Balancing Deposits, will be sufficient (giving effect to the expected timing of availability) to complete the Facility in accordance with the requirements of this Agreement and pay all Project Costs other than interest on the Loans as and when expected to be incurred through the Outside Facility Substantial Completion Date, (ii) that (A) the amount available for disbursement under the Loan Documents for interest on the Loans (determined after deducting the allocated amount of any Defaulting Lender’s Commitment) together with (B) available undisbursed Interest Balancing Deposits, will be sufficient to pay interest on the Loans through October 15, 2018 (or such earlier date, approved by Administrative Agent, by which Borrower reasonably anticipates the Facility Substantial Completion Date occurring), and (iii) that the amount on deposit in the Facility Lessee Construction Account, or available for deposit from the proceeds of repayment of the Facility Lessee Reverse Loan, the proceeds of the Facility Lessee Loan or funds due from Facility Lessee pursuant to the Facility Lease or the Proton System Supplier under the Proton System Purchase Agreement, will be sufficient to pay all Facility Lessee Project Costs, including amounts due or to be become due under the Proton System Purchase Agreement.
(b) **Balancing Deposits.** Within 10 days after written notice from Administrative Agent that the Loans are not “in balance,” and prior to any subsequent Advance, Borrower shall deposit or cause to be deposited sufficient funds with Collateral Agent to bring the Loans “in balance” as determined by Administrative Agent. Any amounts so deposited will be held by Collateral Agent in Construction Account – Building Loan under the Collateral Account Pledge Agreement. Any amounts so deposited to correct a deficiency described in Section 2.06(a)(i) or 2.06(a)(ii)(A) above (a “Non-Interest Balancing Deposit”) shall be disbursed for the payment of Project Costs (other than interest on the Loans) before any additional Advances are made for such Project Costs. Any amounts so deposited to correct a deficiency described in Section 2.06(a)(ii) above (an “Interest Balancing Deposit”) shall be disbursed for the payment of interest on the Loans before any additional Advances are made therefor. Any amounts so deposited to correct a deficiency described in Section 2.06(a)(iii) above (a “Proton System Balancing Deposit”) shall be held in the Facility Lessee Construction Account and disbursed for the payment of amounts due on the Proton System Purchase Agreement. Disbursements of Balancing Deposits shall be subject to the same conditions as would be applicable to an Advance hereunder. Upon the occurrence and during the continuance of a Default, Administrative Agent may apply all or any portion of any Borrower Balancing Deposit (including accrued interest thereon) to the payment of the Obligations or any Project Costs. Borrower shall have the right to deliver an irrevocable standby letter of credit to Administrative Agent in the amount of any required Balancing Deposit in lieu of depositing cash therefor so long as such letter of credit (i) is issued by a Qualified Financial Institution, (ii) permits draws upon delivery of sight drafts by Administrative Agent in order to facilitate the disbursements contemplated hereby in the same manner as if cash were deposited with Administrative Agent for the required Balancing Deposit, and (iii) is otherwise in form and substance satisfactory to Administrative Agent. In the event Administrative Agent makes a demand for a Balancing Deposit hereunder as a result of a casualty or condemnation, any insurance or condemnation proceeds held by Administrative Agent and available for disbursement for construction or reconstruction in accordance with Section 7.01(g) and Section 7.02 hereof (as applicable) hereof shall be credited against the Balancing Deposit required to be made hereunder and shall be treated in the same manner as a Balancing Deposit.

2.07 **Advances to Pay Interest on Senior First Lien Loans and Senior Second Lien Loans.**

(a) Borrower hereby authorizes the Lenders to make Advances on each Interest Payment Date occurring on or prior to the Facility Substantial Completion Date to pay accrued interest on the Senior First Lien Loans and the Senior Second Lien Loans. Administrative Agent shall advise each Lender of the total amount of accrued interest on the Senior First Lien Loans and Senior Second Lien Loans due on such Interest Payment Date and the amount each Lender is required to fund pursuant to Section 2.02(c). Upon receipt of such Advances, the Administrative Agent shall promptly disburse to each Senior First Lien Lender and Senior Second Lien Lender an amount equal to such accrued interest.

(b) Borrower’s authorization in Section 2.07(a) is irrevocable and no further direction, authorization or Draw Request shall be required for Lenders to make such Advances. The Lenders may make such Advances notwithstanding that a Default or Unmatured Default may have occurred under the terms of this Agreement or any other Loan Document.

(c) The portion of the Aggregate Senior First Lien Loan Commitment and Senior Second Lien Loan Commitment allocated in the Project Budget for interest on the Senior First Lien Loans

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and the Senior Second Lien Loans shall be held by the Senior First Lien Lenders and Senior Second Lien Lenders, as applicable, as an unfunded interest reserve. If the interest reserve is insufficient to pay in full interest due on the Senior First Lien Loans and the Senior Second Lien Loans, then such Advance shall be allocated first to interest due on the Senior First Lien Loans and second to interest due on the Senior Second Lien Loans. If funds are not available from the interest reserve to pay in full interest when due on the Senior First Lien Loans and the Senior Second Lien Loans, Borrower shall pay such shortfall from its own funds. Nothing in this provision shall prevent Borrower from paying interest on the Senior First Lien Loans and the Senior Second Lien Loans from its own funds. Cash flow from the Facility must be used to pay interest on the Senior First Lien Loans and the Senior Second Lien Loan before any Advances are made to pay such interest.

2.08 Project Budget.

(a) A budget setting forth the items of direct and indirect costs of all Project Costs is attached to the Project Loan Agreement as Exhibit B and is incorporated herein by reference (as amended and modified from time to time with the approval of Administrative Agent, the “Project Budget”). Each such cost (a “Line Item”) shall be allocated to a grouping (a “Cost Grouping”). The Project Budget shall delineate those Project Costs that may be funded with the Loan proceeds (subject to satisfaction of all applicable conditions to Advances hereunder) being so indicated. The Project Budget shall contain a contingency for non-interest Project Costs and a reserve for interest. The Lenders shall not be obligated to disburse more than the amount shown in the Project Budget for any Cost Grouping.

(b) From time to time, Administrative Agent, or Borrower with the prior written approval of Administrative Agent in accordance herewith, may determine that modifications are necessary in the Project Budget because of actual or anticipated changes in the Project Costs, including the allocation of the non-interest contingency to the Project Costs. If, after due consultation and consideration of the views of Borrower and supporting documentation, Borrower and Administrative Agent do not agree on the changes, Administrative Agent’s reasonable determination shall control.

(c) If Borrower becomes aware of any change in the Project Costs that will increase a Cost Grouping reflected on the Project Budget, Borrower shall promptly notify Administrative Agent in writing, advise Administrative Agent of the source of funds for such increase (which may include funds from the Facility Lessee, the Proton System Supplier or the allocation of the non-interest contingency in the Project Budget or the reallocation of the interest reserve to non-interest contingency) and promptly submit to Administrative Agent for its approval a revised Project Budget. Any reallocation of any Cost Groupings in the Project Budget in connection with cost overruns shall be subject to Administrative Agent’s reasonable approval except as expressly set forth herein, and upon Completion of the Improvements and final payment to the Contractor, any unused non-interest contingency will be reallocated to the interest reserve. The Lenders shall have no obligation to make any further Advances unless and until the revised Project Budget so submitted by Borrower is approved by Administrative Agent. All savings resulting from the modification of the Project Budget, other than for interest on the Loan, shall be reallocated to the non-interest contingency and shall be available for costs in any other Project Budget line item.
2.09 Use of Proceeds. Unless otherwise permitted by Administrative Agent, Advances shall be solely for Building Costs. Advances for the payment of any Retainage to Contractor are subject to the provisions of Section 2.05(f).

2.10 Final Construction Advance; Release of Retainage. Unless otherwise permitted by Administrative Agent, Advances for the payment of final amounts due Contractor under the Construction Contract and the release of the Retainage to Contractor shall not be made until Administrative Agent has received and approved all of the following (in addition to the conditions set forth in Section 2.04) (other than Punch List Items for which Collateral Agent is holding Punch List Items Funds in accordance with Section 2.14):

(a) evidence of Completion of the Facility and a certification from the Independent Engineer that Completion of the Facility has occurred;

(b) a Certificate of Completion signed by the Architect in form satisfactory to Administrative Agent;

(c) duly executed final unconditional lien waivers satisfactory to Administrative Agent from Contractor and each subcontractor;

(d) evidence that all claims of lien that may have been recorded or notice thereof served on Administrative Agent or any Lender have either been paid in full and released, or Borrower has posted or caused to be posted an appropriate surety bond or other assurances (including, without limitation, title insurance) to discharge of record or insure over the same;

(e) evidence that all sums due in connection with the construction of the Improvements have been paid in full (or will be paid out of the funds requested to be advanced) and that no party claims or has a right to claim any statutory or common law lien arising out of the construction of the Improvements or the supplying of labor, material, and/or services in connection therewith;

(f) such title insurance endorsements as Administrative Agent may reasonably require, including, without limitation, endorsements to the Title Policy insuring the priority of the Mortgages upon the Mortgaged Property, excepting only such items as shall be permitted under the Loan Documents, and insuring over all mechanics’ and material suppliers’ liens arising (or which may arise) from the Completion of the Facility;

(g) an ALTA as-built survey or other satisfactory evidence (which includes an appropriate professional seal) (and which updated ALTA as-built survey shall be read into the Title Policy) showing that (A) the Improvements as they have been built and are located in accordance with the Plans and Specifications and do not encroach on any easement or public or private right of way, (B) the Improvements have been constructed within the boundaries of the Property, and (C) the Improvements have been constructed within the setback lines as required by applicable zoning ordinances and do not encroach upon any other lot or property;

(h) a full and complete set of “as-built” Plans and Specifications of the Improvements, showing the final specifications of all Improvements prepared by the Contractor and reviewed by the Architect;
(i) if requested by Administrative Agent a warranty book, together with all guaranties and maintenance agreements, on all Improvements;

(j) satisfactory evidence of continuing insurance coverage in accordance with Section 7.01 hereof;

(k) if requested by Administrative Agent, copies of all licenses, permits and agreements necessary for the use, operation and occupancy of the Facility not previously delivered to Administrative Agent;

(l) such documents, letters, affidavits, reports and assurances as Administrative Agent, and the Independent Engineer may reasonably require, including, without limitation, executed AIA Form G704 (Certificate of Substantial Completion), executed AIA Form G706 (Contractor’s Affidavit of Payments of Debts and claims, AIA Form G706A (contractor’s Affidavit of Release of liens), AIA Form G707 (Consent of Surety of Final payment); and

(m) if requested by Administrative Agent, a notice of completion duly recorded in the official Records of the County, if then customary or required by law.

Final payments and Retainage due to one party shall not be conditioned upon delivery of the materials above with respect to other parties (for example, Retainage due to Contractor shall not be conditioned on delivery of operational permits from Facility Lessee).

2.11 Stored Materials; Deposits. The 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:

(a) Borrower shall deliver to Administrative Agent bills of sale or other evidence reasonably satisfactory to Administrative Agent of the cost of, and, subject to the payment therefor, Borrower’s, Operator’s or Facility Lessee’s title in and to such Stored Materials;

(b) The Stored Materials are identified to the Facility and Borrower, Operator or Facility Lessee, are segregated so as to adequately give notice to all third parties of Borrower’s, Operator’s or Facility Lessee’s title in and to such materials, and are components in substantially final form ready for incorporation into the Improvements;

(c) The Stored Materials are stored at the Facility or at such other third-party owned and operated site as are bonded, as Administrative Agent shall reasonably approve, and are protected against theft and damage in a manner satisfactory to Administrative Agent;

(d) The Stored Materials will be paid for in full with the funds to be disbursed, and all lien rights or claims of the supplier will be released upon full payment;

(e) Collateral Agent for the benefit of the Secured Parties has or will have upon payment with disbursed funds a perfected, first priority security interest in the Stored Materials;

(f) The Stored Materials are insured for an amount equal to their replacement costs in accordance with Section 7.01 of this Agreement;
(g) If required by Administrative Agent, the Independent Engineer shall certify that it has inspected such Stored Materials and they are in good condition and suitable for use in connection with the Improvements; and

(h) The cost of Stored Materials stored, whether at the Facility or off the Facility, at any one time shall not exceed $3,000,000, individually, or $15,000,000, in the aggregate.

2.12 No Reliance. All conditions and requirements of this Agreement are for the sole benefit of Administrative Agent and the Lenders and no other Person (including, without limitation, the Independent Engineer, the Contractor, and subcontractors and materialmen engaged in the construction of the Improvements) shall have the right to rely on the satisfaction of such conditions and requirements by Borrower.

2.13 Miscellaneous.

(a) The making of an Advance by the Lenders shall not constitute Administrative Agent’s or any Lender’s approval or acceptance of the construction theretofore completed. Administrative Agent’s inspection and approval of the Plans and Specifications, the construction of the Improvements, or the workmanship and materials used therein, shall impose no liability of any kind on Administrative Agent or the Lenders, the sole obligation of Administrative Agent as the result of such inspection and approval being to approve the Advances if and to the extent, required by this Agreement.

(b) ALL POTENTIAL LIENORS ARE HEREBY CAUTIONED TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER. NO POTENTIAL LIENOR SHOULD EXPECT THE LENDERS TO MAKE ADVANCES OF THE LOANS IN AMOUNTS AND AT TIMES SUCH THAT IT WILL NOT BE NECESSARY FOR EACH SUCH POTENTIAL LIENOR TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER.

2.14 Substantial Completion of Improvements. Upon Substantial Completion of the Improvements, Borrower shall request an Advance in an amount equal to the estimated cost to complete the Punch List Items (the “Punch List Costs”), as determined by Administrative Agent and the Independent Engineer in their sole discretion, multiplied by 125% (collectively, the “Punch List Items Funds”) minus the amounts available for disbursement in the Borrower Construction Account and under the Loan Agreements to pay such costs. If at any time Administrative Agent reasonably determines that the amount remaining in the Borrower Construction Account will not be sufficient to complete the Punch List Items, Administrative Agent shall notify Borrower of such determination and Borrower shall (in no less than five (5) Business Days of receipt of such notice) request an additional Advance or deposit additional funds into the Borrower Construction Account as required by Administrative Agent in its sole discretion. Collateral Agent shall disburse or cause to be disbursed out of the Borrower Construction Account to Borrower the Punch List Items Funds upon satisfaction by Borrower of each of the following conditions with respect to each such disbursement: (i) Borrower shall submit a written request for payment to Administrative Agent at least 10 Business Days prior to the date on which Borrower requests such payment to be made, which request shall specify the Punch List Item to be paid, (ii) on the date such request is received by Administrative Agent and on the date such payment is to be made, no Default or event which
after the expiration of all notice and cure periods would become a Default, shall then exist and remain uncured and (iii) Borrower shall deliver to Administrative Agent such other information as Administrative Agent reasonably requests. Administrative Agent shall not be required to disburse Punch List Items Funds more frequently than once each calendar month, on the same day as any other funds are being disbursed in accordance with the terms of this Agreement. Nothing contained in this Section 2.14 shall (1) make Administrative Agent or any Lender responsible for performing or completing the Punch List Items, (2) require Administrative Agent or any Lender to expend funds in addition to the Punch List Items Funds to complete the Punch List Items, (3) obligate Administrative Agent or any Lender to proceed with the completion of the Punch List Items, or (4) obligate Administrative Agent or any Lender to demand from Borrower additional sums to complete the Punch List Items. Upon the occurrence and during the continuance of a Default, Administrative Agent at its option may withdraw the Punch List Items Funds and, if Administrative Agent does so, Administrative Agent shall apply the Punch List Items Funds to the payment of the Punch List Items or to the payment of the Loan pursuant to Section 3.06. Administrative Agent’s rights to withdraw and apply the Punch List Items Funds shall be in addition to all other rights and remedies provided to Administrative Agent and the Lenders under the Loan Documents.

ARTICLE III

LOAN TERMS

3.01 Loans and Advances. All Advances of the Loans are subject to satisfaction of the conditions to disbursement contained in Article II of this Agreement, as well as the terms of this Article.

3.02 Requests for Advances. To request an Advance, Borrower shall deliver a Draw Package to Administrative Agent by electronic communication as provided in Section 11.01 hereof, not later than 11:00 a.m., New York City time, 10 Business Days before the date of the proposed Advance. Each such request shall be irrevocable, shall be in a form approved by Administrative Agent and shall, among other things, specify the following information:

(i) the aggregate amount of the requested Advance; and

(ii) the requested Borrowing Date of such Advance, which Borrowing Date shall be a Business Day.
Promptly following receipt of the Draw Package in accordance with this Section, Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender’s Loan to be made as part of the requested Advance.

3.03 Funding of New Loan Advances.

(a) Generally. Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 11:00 a.m., New York City time, to the account of Administrative Agent most recently designated by it for such purpose by notice to the Lenders. Administrative Agent will make such Loans available to Borrower by promptly crediting the amounts so received, in like funds, to the Borrower Operating Account maintained with Collateral Agent, unless the Administrative Agent determine to direct funds to the applicable Borrower Construction Account maintained with the Collateral Agent.

(b) Advance Fundings. Unless Administrative Agent shall have received notice from a Lender prior to the proposed date of any Advance that such Lender will not make available to Administrative Agent such Lender’s share of such Advance, Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to Borrower a corresponding amount. If a Lender is a Defaulting Lender, then such Defaulting Lender and Borrower severally agree to pay to Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to Borrower to but excluding the date of payment to Administrative Agent, at the interest rate applicable to such Loan. If such Defaulting Lender pays such amount to Administrative Agent, then such amount shall constitute such Defaulting Lender’s Loan included in such Advance.

3.04 Interest.

(a) Interest Rate.

Senior First Lien Loans. The Senior First Lien Loans shall bear interest at a per annum rate of 9.0%.

Senior Second Lien Loans. Prior to the Facility Substantial Completion Date, the Senior Second Lien Loans shall bear interest at a per annum rate of 11.5%. From and including the Facility Substantial Completion Date until the Maturity Date, the Senior Second Lien Loans shall bear interest at a per annum rate of 12.0%.

Subordinated Loans. Prior to the Facility Substantial Completion Date, the Subordinated Loans shall bear interest at a per annum rate of 13.0%, compounded quarterly. From and including the Facility Substantial Completion Date until the Maturity Date, the Subordinated Loans shall bear interest at a per annum rate of 13.5%, compounded quarterly.

(b) Default Rate. Notwithstanding the foregoing, to the extent permitted under applicable law, upon the occurrence of a Default, and after maturity, the Loans shall bear interest, after as well as before judgment, at a rate per annum equal to 2% plus the rate otherwise applicable to such Loans as provided in the preceding paragraphs of this Section (the “Default Rate”).
(c) **Payment of Accrued Interest.**

Accrued interest on the Senior First Lien Loans and the Senior Second Lien Loans shall be payable in arrears on each Interest Payment Date; provided that (i) interest accrued pursuant to paragraph (b) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, and (iii) application of any payment of interest shall be subject to the priorities set forth herein and in the Agreement Among Lenders.

Accrued interest on the Subordinated Loans shall accrue and be payable on the Maturity Date for the Subordinated Loans, provided that (i) interest accrued pursuant to paragraph (b) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, and (iii) application of any payment of interest shall be subject to the priorities set forth herein and in the Agreement Among Lenders.

(d) **Computation of Interest.** All interest hereunder shall be computed on the basis of a year of 360 days, and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

3.05 **Repayment of Loans; Evidence of Debt.**

(a) **Repayment at Maturity.** Borrower hereby unconditionally promises to pay to Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan and all unpaid accrued interest on the Maturity Date.

(b) **Lender Accounting.** Each Lender shall maintain in accordance with its usual practice an accounting of the indebtedness of Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) **Administrative Agent Accounting.** Administrative Agent shall maintain an accounting of (i) the amount of each Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from Borrower to each Lender hereunder and (iii) the amount of any sum received by Administrative Agent hereunder for the account of the Lenders and each Lender’s share thereof.

(d) **Prima Facie Evidence.** Absent manifest error, the entries made in the accounting maintained pursuant to paragraph (b) or (c) of this Section shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or Administrative Agent to maintain such accounting or any error therein shall not in any manner affect the obligation of Borrower to repay the Loans in accordance with the terms of this Agreement.
3.06 Prepayment of Loans. Borrower shall have the right (i) at any time and from time to time to prepay the Senior First Lien Loans and Senior Second Lien Loans in whole or in part, and (ii) prior to Substantial Completion of the Facility, with the consent of the Administrative Agent, and after Substantial Completion of the Facility at Borrower’s election reduce the undrawn Commitment of the Senior First Lien Lenders and Second Lien Lenders. In connection with any prepayment prior to the Make-Whole Fee End Date, there shall also be due and payable to the Senior First Lien Lenders (other than to the Proton System Supplier in its capacity as a Senior First Lien Lender or any successor or assignee in such capacity) and Senior Second Lien Lenders a Make-Whole Fee. Borrower shall notify Administrative Agent by electronic communication as provided in Section 11.01 hereof of any prepayment or reduction in Commitment not later than 11:00 a.m., New York City time, 10 Business Days before the date of prepayment. Each such notice shall be irrevocable and shall specify the effective date of such prepayment or reduction in Commitment and the principal amount of the Loans to be prepaid or undrawn Commitment to be reduced. Promptly following receipt of any such notice, Administrative Agent shall advise the Lenders of the contents thereof. Unless otherwise agreed by the Senior First Lien Lenders who are being prepaid and the Senior Second Lien Lenders, each whole or partial prepayment of the Loans or reduction in undrawn Commitment shall be applied first to prepayment or reduction of the undrawn Commitment of the Senior First Lien Loans and second to prepayment or reduction of the undrawn Commitment of the Senior Second Lien Loans. Prepayments shall be accompanied by accrued interest on the amount prepaid, plus any fees required by Section 3.07 or other amounts required by Section 3.09 hereof.

3.07 Fees.

(a) Upfront Fee. Borrower agrees to pay to Administrative Agent, on the Closing Date, (i) for the account of each Senior First Lien Lender (other than the Proton System Supplier in its capacity as a Senior First Lien Lender or any successor or assignee in such capacity) a fee equal to [****] of the Commitment of such Senior First Lien Lender, and (ii) for the account of the Senior Second Lien Lender a fee equal to [****] of the Aggregate Senior Second Lien Loan Commitment of such Senior Second Lien Lender.

(b) Commitment Fee. Borrower agrees to pay to Administrative Agent, on each Interest Payment Date, (i) for the account of each Senior First Lien Lender (other than the Proton System Supplier in its capacity as a Senior First Lien Lender or any successor or assignee in such capacity) a fee equal calculated at an annual rate of [****] of the undrawn Commitment of such Senior First Lien Lender, and (ii) for the account of the Senior Second Lien Lender a fee calculated at an annual rate of [****] of the undrawn Aggregate Senior Second Lien Loan Commitment of such Senior Second Lien Lender.

(c) Arranger Fee. Borrower agrees to pay to JPMorgan Chase Bank, N.A., on the Closing Date, an arranger fee in the amount [****].

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
(d) **Administrative Agent Fee.** Borrower agrees to pay to Administrative Agent, for its own account, an annual agent’s fee in the amount of [***] payable in advance, commencing on the Closing Date.

(e) **Collateral Agent and Construction Monitoring Fee.** Borrower agrees to pay to Collateral Agent, for its own account, a collateral agency and construction monitoring fee, payable from proceeds of an Advance quarterly in arrears, commencing on the third Interest Payment Date and continuing every third Interest Payment Date thereafter until the Obligations are paid in full, at which time the last installment shall be due, in an amount equal to [***]. The collateral agency and construction monitoring fee assumes that the Independent Engineer will visit the construction site no more frequently than once per month. Unless an Event of Default shall have occurred and be continuing, the fees and expenses of the Independent Engineer shall be covered by the collateral agency and construction monitoring fee. In addition, Borrower shall pay any fees and expenses of the Independent Engineer incurred or relating to any site visits that are more frequent than assume or relating to any offsite visits that may be required in connection with the performance of its responsibilities.

(f) **Fees Non-Refundable.** All fees payable hereunder shall be paid on the dates due, in immediately available funds, to Administrative Agent for distribution, in the case of the loan fee, to the Lenders. Fees paid shall not be refundable under any circumstances.

3.08 **Increased Costs.**

(a) **Increased Costs of Making or Maintaining Loans.** If any Change in Law shall (i) impose, modify or deem applicable any reserve, special deposit or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender, (ii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or (iii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender or such other Recipient hereunder (whether of principal, interest or otherwise), then Borrower will pay to such Lender or such other Recipient such additional amount or amounts as will compensate such Lender or such other Recipient for such additional costs incurred or reduction suffered.

(b) **Capital Adequacy.** If any Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender’s capital or on the capital of such Lender’s holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender or such Lender’s holding company could have achieved but for such Change in Law (taking into consideration such Lender’s policies and the policies of such Lender’s holding company with respect to capital adequacy and liquidity), then from time to time Borrower will pay to such Lender such

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additional amount or amounts as will compensate such Lender or such Lender’s holding company for any such reduction suffered.

(c) **Certificate of Amounts Due.** A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) **Delay in Demand For Compensation.** Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender’s right to demand such compensation.

3.09 **Taxes.**

(a) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 3.09) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) **Payment of Other Taxes by Borrower.** Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Administrative Agent timely reimburse each Recipient for, Other Taxes.

(c) **Evidence of Payments.** As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 3.09, Borrower shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(d) **Indemnification by Borrower.** Borrower shall indemnify, defend and hold harmless each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto (including the expenses of enforcing the foregoing indemnification), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.
(e) **Indemnification by the Lenders.** Each Lender shall severally defend and hold harmless Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 11.04(c)(i) hereof relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto (including the expenses of enforcing the foregoing indemnification), whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Administrative Agent to the Lender from any other source against any amount due to Administrative Agent under this paragraph (e).

(f) **Status of Lenders.**

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and Administrative Agent, at the time or times reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.09(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender’s reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. Federal backup withholding tax;
(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), whichever of the following is applicable:

1. in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

2. executed originals of IRS Form W-8ECI;

3. in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit E-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of Borrower within the meaning of section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN; or

4. to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or Administrative Agent to determine the withholding or deduction required to be made; and
(D) if a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable law (including as prescribed by section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.09 (including by the payment of additional amounts pursuant to this Section 3.09), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.09 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority in the event that such indemnified party is required to repay such refund to such Governmental Authority). Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival; Defined Terms. Each party’s obligations under this Section 3.09 shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document. For purposes of this Section 3.09, the term “applicable law” includes FATCA.
(a) **Payments Generally.** Borrower shall make each payment required to be made by it hereunder prior to 11:00 a.m., New York City time, on the date when due, in immediately available funds, without set-off, counterclaim or deduction. Any amounts received after such time on any date may, in the discretion of Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to Administrative Agent at its offices at the address provided in the Collateral Account Pledge Agreement. Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be the immediately preceding Business Day. All payments hereunder shall be made in U.S. dollars.

(b) **Application of Insufficient Funds.** If at any time insufficient funds are received by and available to Administrative Agent to pay fully all amounts of principal, interest and fees then due and payable hereunder, subject to any written agreement among Administrative Agent and Lenders, such funds shall be applied:

(i) first, to amounts then due and payable to Administrative Agent,

(ii) second, to amounts then due and payable to the Senior First Lien Lenders,

(iii) third, to amounts then due and payable to the Senior Second Lien Lenders, and

(iv) fourth, to amounts then due and payable to the Subordinated Lenders;

and within each such priority, such funds shall be applied (x) first, towards payment of fees, indemnities and expense reimbursements then due hereunder to the parties entitled thereto; (y) second, towards payment of interest then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest then due to such parties, and (z) third, towards payment of principal then due hereunder then due, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) **Allocation of Payments.** If, except as otherwise expressly provided herein, any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender having the same payment priority in the Loan Collateral, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by all such Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; **provided** that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to Borrower or any subsidiary or
Affiliate thereof (as to which the provisions of this paragraph shall apply). Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of Borrower in the amount of such participation.

(d) **Advance Payments.** Unless Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to Administrative Agent for the account of the Lenders hereunder that Borrower will not make such payment, Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it but excluding the date of payment to Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation.

3.11 **Mitigation Obligations; Replacement of Lenders.**

(a) **Mitigation of Increased Costs.** If any Lender requests compensation under Section 3.08 hereof, or if Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.09 hereof, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.08 or 3.09 hereof, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) **Replacement of Lenders.** If any Lender requests compensation under Section 3.08 hereof, or if Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.09 hereof, and, such Lender fails to withdraw any such notice to Borrower within 5 Business Days after Borrower’s request for such withdrawal, then, provided no Default has occurred and is then continuing, Borrower may, at its sole expense and effort, upon written notice to such Lender and Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 11.04 hereof), all its interests, rights (other than its existing rights to payments pursuant to Section 3.08 or 3.09 hereof) and obligations under this Agreement to an assignee (other than Borrower, any Guarantors or their Affiliates) that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) Borrower shall have received the prior written consent of Administrative Agent, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, (including, without limitation, all prepayment fees) from the assignee (to the extent of such outstanding principal and

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accrued interest and fees) or Borrower (in the case of all other amounts); provided, however, that in the case of Borrower’s replacement of a Defaulting Lender for failure to fund Loans hereunder, the assignee or Borrower, as the case may be, shall hold back from such amounts payable to such Lender and pay directly to Administrative Agent, any payments due to Administrative Agent or the Non-Defaulting Lenders by Defaulting Lender under this Agreement, and (iii) in the case of any such assignment resulting from a claim for compensation under Section 3.08 hereof or payments required to be made pursuant to Section 3.09 hereof, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrower to require such assignment and delegation cease to apply.

3.12 Trust Fund Provisions. All proceeds advanced hereunder shall be subject to the trust fund provisions of section 13 of the Lien Law of the State of New York, as amended from time to time (the “Lien Law”). The affidavit annexed hereto as Exhibit G is made pursuant to and in compliance with section 22 of the Lien Law, and, if so indicated in said affidavit, Loan proceeds will be used, in part, for reimbursement for payments made by Borrower prior to the Initial Advance hereunder but subsequent to the commencement of the construction and equipping of the Improvements for items defined as an “improvement” and/or “cost of improvement” under section 2 of the Lien Law.

ARTICLE IV
CONSTRUCTION OF IMPROVEMENTS; GENERAL COVENANTS

4.01 Acceptance of Construction Documents; Completion of Construction.

(a) Acceptance of Construction Documents. Administrative Agent’s acceptance of the Plans and Specifications, the Architectural Services Agreement (Construction Administration), the Construction Contract, the Proton System Purchase Agreement, bonds and other construction documents (including Administrative Agent’s acceptance of any modifications thereof and any Person providing work, labor or services pursuant thereto) shall not be deemed in any respect a representation or warranty, express or implied, that the Improvements will be structurally sound, have a value of any particular magnitude or otherwise satisfy a particular standard, and Administrative Agent shall have no duty to inform Borrower of Administrative Agent’s assessment of any such construction document.

(b) Completion of Construction. Borrower shall cause the Facility to be Substantially Completed on or before the Outside Facility Substantial Completion Date. Borrower shall (a) diligently pursue construction of the Facility to Final Completion in accordance with the Construction Schedule, (b) not permit (except in the event of Force Majeure Causes) cessation of the work of construction for a period in excess of 20 consecutive days without the prior written consent of Administrative Agent, and (c) pay all sums and perform such duties as may be necessary to complete such construction of the Facility in accordance with the Plans and Specifications and in compliance with all restrictions, covenants and easements affecting the Mortgaged Property, all Legal Requirements and all Governmental Approvals, and with all terms and conditions of the Loan Documents, and, subject to Permitted Encumbrances, free from any Liens, claims or assessments (actual or contingent) asserted against the Mortgaged Property for any material, labor or other items furnished in connection therewith unless bonded and removed as a Lien on the Mortgaged Property.
(c) **Americans with Disabilities Act Compliance.** The Facility shall be constructed and hereafter maintained in strict accordance and full compliance with all of the requirements of the ADA (to the extent that the ADA requirements are applicable to the Facility pursuant to the Legal Requirements). Borrower shall be responsible for all ADA compliance costs. At Administrative Agent’s written request from time to time, Borrower shall provide Administrative Agent with written evidence of such compliance satisfactory to Administrative Agent. Borrower shall be solely responsible for all such ADA costs of compliance and reporting.

4.02 **Construction Progress.**

(a) **Material Changes to Improvements or the Proton System.** There shall be no material change in the Plans and Specifications, to the specifications to the Proton System set forth in the Proton System Purchase Agreement or to the Building Interface Document without the prior consent of Administrative Agent. A material change for purposes hereof shall be any change which (i) involves a cost of more than (A) for any single item, $1,500,000 or (B) for all such items (without netting cost increases against cost savings), $1,500,000, (ii) impairs the structural integrity or the configuration of the Facility and the Outside Facility Substantial Completion Date, (iii) substantially changes the architectural appearance of the Improvements, (iv) changes the utility of the Proton System, (v) results in any delay in the Completion of the Facility, or (vi) results in a violation of any applicable Legal Requirement. Change requests shall describe the proposed change in reasonable detail, set forth for the cost of such change and any effect such change shall have on the schedule for Completion of the Facility, and the source of funds for any payment of the costs of effecting such change, and shall be submitted to Administrative Agent for consent on a form acceptable to Administrative Agent, applicable bond sureties (if required in order to maintain the effectiveness of the bonds), and all other Persons required by Administrative Agent. Administrative Agent’s consent to any change in the Plans and Specifications, to the specifications to the Proton System set forth in the Proton System Purchase Agreement or to the Building Interface Document may be conditioned upon, among other things, Borrower’s compliance with a demand for a Balancing Deposit pursuant to Section 2.06 hereof. Borrower shall promptly correct all defects in the Facility or any material departure from the Plans and Specifications not previously approved by Administrative Agent to the extent required hereunder. Borrower agrees that the advance of any proceeds of the Loan, whether before or after such defects or departures from the Plans and Specifications are discovered by or brought to the attention of Administrative Agent, shall not constitute a waiver of Administrative Agent’s right to require compliance with this covenant.

(b) **Foundation Survey and Endorsement.** To the extent required by Administrative Agent, within 30 days after completion of the construction of the foundation of the Improvements, and as a condition precedent to any further Advances, Borrower shall deliver or cause to be delivered to Administrative Agent an update to the Survey showing the location of such foundation and an endorsement to the Title Policy insuring that such foundation is within the boundary lines of the Land, does not violate any applicable covenants, conditions, restrictions or agreements affecting the Land, and does not encroach upon any easements or rights of way affecting the Land or any portion thereof.
(c) **Survey Update.** If requested by Administrative Agent, within 120 days after Substantial Completion of the Facility, Borrower shall deliver or cause to be delivered to Administrative Agent an update to the survey reflecting the Facility as so completed.

(d) **Estoppel Certificates.** Within 10 days after the reasonable request of Administrative Agent from time to time, Borrower shall exercise reasonable commercial efforts to obtain and deliver to Administrative Agent an estoppel letter or certificate in form and substance satisfactory to Administrative Agent from the Facility Lessee, as determined by Administrative Agent, that the applicable agreements to which such entity is a party remain in full force and effect and that no default by Borrower exists thereunder and containing such other information as may be required to respond to such requests.

(e) **Easements and Restrictions; Zoning.** Borrower shall cause the Facility to be constructed and to be used, at all times, in accordance with (a) a C6-3 zoning district, (b) all covenants and restrictions set forth in Section 7 of the Contract of Sale, together with the covenants and restrictions set forth in the EDC Deed that are applicable to the owner of the Facility (as opposed to the operator of the Facility), (c) the Harlem-East Harlem Urban Renewal Plan, dated December 1968, as amended or otherwise modified from time to time (the “Urban Renewal Plan”) and (d) the portions of the Memorandum of Understanding between EDC and New York City Development of Environmental Protection that are applicable to the owner of the Facility (as opposed to the operator of the Facility), and for no other purpose (clauses (a) – (d), collectively, the “Use Restrictions”).

Borrower shall submit to Administrative Agent, for Administrative Agent’s written approval (not to be unreasonably withheld) prior to the execution thereof by Borrower, all proposed easements, restrictions, covenants, permits, licenses and other instruments that would affect the title to the Mortgaged Property, accompanied by a survey showing the exact proposed location thereof and such other information as Administrative Agent shall reasonably require. Borrower shall not subject the Facility or any part thereof to any easement, restriction or covenant (including any restriction or exclusive use provision in any lease or other occupancy agreement) without the prior written approval of Administrative Agent (not to be unreasonably withheld, conditioned or delayed in the case of utility easements only). With respect to any and all existing easements, restrictions, covenants or operating agreements that benefit or burden the Facility and any easement, restriction or covenant to which the Facility may hereafter be subjected in accordance with the provisions hereof, Borrower shall: (a) observe and perform the obligations imposed upon Borrower and the Facility; (b) not alter, modify or change the same without the prior written approval of Administrative Agent in its sole discretion; (c) enforce its rights thereunder in a commercially reasonable manner so as to preserve for the benefit of the Facility the full benefits of the same; and (d) deliver to Administrative Agent a copy of any notice of default or other material notice received by Borrower in respect of the same promptly after Borrower’s receipt of such notice.
4.03 Purchase of Materials Under Conditional Sales Contract. No materials, equipment, fixtures or any other part of the Facility shall be purchased by Borrower under any security agreement or other arrangements wherein the seller reserves or purports to reserve the right to remove or to repossess any such items or to consider them personal property after their incorporation in the work of construction, unless consented to by Administrative Agent in writing or permitted to Facility Lessee by the Facility Lease.

4.04 Inspection; Independent Engineer.

(a) Inspections. Administrative Agent, through its officers, agents and employees, shall have the right at all reasonable times, on reasonable prior notice and at Administrative Agent’s sole risk (i) to enter upon the Facility and inspect the work of construction and (ii) to examine the books, records, accounting data and other documents pertaining to the Facility. Borrower will cooperate with Administrative Agent and its representatives and consultants.

(b) Independent Engineer. In furtherance of Administrative Agent’s rights hereunder, Administrative Agent may, at its option, require a monthly inspection (or other greater frequency as determined by Administrative Agent or the Independent Engineer) of the Facility by the Independent Engineer during the construction of the Improvements and the installation of the Proton System, at Borrower’s expense (subject, however, to the provisions of Section 3.07 hereof). Without limitation of the provisions of Section 4.04(a) hereof, Borrower shall provide the Independent Engineer and, upon Facility Lessee’s request, the Facility Lessee, with copies of any testing reports received by Borrower with respect to the Facility promptly upon Borrower’s receipt thereof.

(c) Exculpation. It is expressly understood and agreed that Administrative Agent is under no duty to supervise or to inspect the work of construction or equipment installation and that any such inspection by or on behalf of Administrative Agent is for the sole purpose of protecting the interests of Administrative Agent and the Lenders with respect to the Loan Collateral. Failure to inspect the work or any part thereof shall not constitute a waiver of any of Administrative Agent’s rights hereunder. Inspection not followed by notice of Default shall not constitute a waiver of any Default then existing; nor shall it constitute an acknowledgment that there has been or will be compliance with the Plans and Specifications, the specifications for the Proton System or applicable Legal Requirements or that the construction of the Improvements and installation of the Proton System is free from defective materials or workmanship. It is further understood and agreed that any consents or approvals of Lenders hereunder are for the sole purpose of protecting the interests of Lenders under the Loan Documents, and Borrower shall have no right to rely on such approvals for Borrower’s purposes.

(d) Authority of Independent Engineer. Borrower acknowledges that (i) Independent Engineer has been retained by Administrative Agent to act as a consultant and only as a consultant to Administrative Agent in connection with the construction of the Improvements, (ii) Independent Engineer shall in no event or under any circumstance have any power or authority to make any decision or to give any approval or consent or to do any other act or thing which is binding upon Administrative Agent or the Lenders and any such purported decision, approval, consent, act or thing by Independent Engineer on behalf of Administrative Agent or the Lenders shall be void and of no force or effect, (iii) notwithstanding the recommendations of Independent Engineer, Administrative Agent and the Lenders reserve the right to make any and all decisions required to
be made by Administrative Agent or the Lenders under this Agreement and to give or refrain from giving any and all consents or approvals required to be given by Administrative Agent or the Lenders under this Agreement and to accept or not accept any matter or thing required to be accepted by Administrative Agent or the Lenders under this Agreement, without in any instance 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 Independent Engineer to Administrative Agent, the Lenders or any other Person with respect thereto, (iv) Administrative Agent and the Lenders reserve the right in their 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 Independent Engineer to Administrative Agent, the Lenders or any other Person, and (v) Administrative Agent and the Lenders reserve the right in their sole and absolute discretion to replace Independent Engineer with another Independent Engineer at any time and without prior notice to or approval by Borrower. Borrower shall have no right to receive copies of any written reports by Independent Engineer, but in the event Administrative Agent does make such information or portions thereof available to Borrower, Borrower shall rely thereon at its own risk.

(e) Independent Engineer Duties. Borrower shall permit Administrative Agent to retain the Independent Engineer, at the sole cost and expense of Borrower, to perform, among other things, the following services on behalf of Administrative Agent and the Lenders:

(i) To review and advise Administrative Agent and the Lenders whether, in the opinion of the Independent Engineer, the Plans and Specifications and the Construction Contract are satisfactory;

(ii) To review Draw Requests and change orders; and

(iii) To make periodic inspections in accordance with this Section 4.04.

The Administrative Agent, the Lenders or the Independent Engineer shall not have any liability to Borrower on account of (x) the services performed by the Independent Engineer, (y) any neglect or failure on the part of the Independent Engineer to properly perform its services or (z) any approval by the Independent Engineer of construction of the Improvements. None of Administrative Agent, the Lenders or the Independent Engineer assumes any obligation to Borrower or any other Person concerning the quality of construction of the Improvements or the absence therefrom of defects.

4.05 Right to Post Signs; Publicity. On Administrative Agent’s request, Borrower will allow Administrative Agent to share signage on the Facility for the purpose of identifying Administrative Agent as the agent or lead bank and the Lenders, as the lenders for the construction financing for the Improvements. The form of such signage shall be subject to the prior approval of Borrower, such approval not to be unreasonably withheld, conditioned or delayed. Administrative Agent shall be permitted to publicize its involvement and the involvement of the Lenders in the construction financing for the Improvements with Borrower’s and Facility Lessee’s prior written approval (not to be unreasonably withheld, conditioned or delayed).
4.06 Liens, Taxes, and Governmental Claims

(a) **Liens.** Borrower shall not suffer to exist, and shall pay, satisfy and obtain the release, within 30 days after having knowledge thereof (by payment, bonding and/or discharge), of all other claims and Liens affecting or purporting to affect the title to, or which may be or appear to be Liens on, the Borrower Collateral or any part thereof (other than the Permitted Encumbrances), and all costs, charges, interest and penalties on account thereof, including without limitation the claims of all Persons supplying labor or materials to the Mortgaged Property, and shall give Administrative Agent, upon demand, evidence satisfactory to Administrative Agent of the payment, satisfaction or release thereof. Borrower shall warrant and defend the validity of the Lien on the Borrower Collateral against the claims of all Persons whomsoever, subject only to Permitted Encumbrances. Notwithstanding the foregoing, nothing herein contained shall require Borrower to pay any claims or Liens which Borrower in good faith disputes and which Borrower, at its own expense, is currently and diligently contesting, provided that Borrower complies with the provisions of Section 4.06(c) hereof.

(b) **Taxes.** Borrower agrees to pay or cause to be paid, prior to the date they would become delinquent if not paid, any and all taxes, assessments and governmental charges whatsoever levied upon or assessed or charged against the Mortgaged Property, including all water and sewer taxes, assessments and other charges, fines, impositions and rents, if any. If requested by Administrative Agent, Borrower shall give to Administrative Agent a receipt or receipts, or certified copies thereof, evidencing every such payment by Borrower, not later than 45 days after such payment is made. Notwithstanding the foregoing, nothing herein contained shall require Borrower to pay any taxes, assessments or governmental charges which Borrower in good faith disputes and which Borrower, at its own expense, is currently and diligently contesting, provided that applicable law allows non-payment thereof during the pendency of such contest, and provided further that Borrower complies with the provisions of Section 4.06(c) hereof.

(c) **Contest.** Borrower shall not be required to pay any taxes, claims or governmental charges, or claims, or Liens being contested in accordance with the provisions of Section 4.06(a) or (b) hereof, as the case may be, so long as (i) Borrower diligently prosecutes such dispute or contest to a prompt determination in a manner not prejudicial to Administrative Agent or the Lenders and promptly pays all amounts ultimately determined to be owing, and (ii) Borrower provides security for the payment of such tax, assessment or governmental charge, or claim or Lien (together with interest and penalties relating thereto) in an amount and in form and substance satisfactory to Administrative Agent. If Borrower shall fail to pay any such amounts ultimately determined to be owing or to proceed diligently to prosecute such dispute or contest as provided herein, then, upon the expiration of 10 days after written notice to Borrower by Administrative Agent of Administrative Agent’s determination thereof, in addition to any other right or remedy of Administrative Agent, Administrative Agent may, but shall not be obligated to, discharge the same, and the cost thereof shall be reimbursed by Borrower to Administrative Agent. The payment by Administrative Agent of any delinquent tax, assessment or governmental charge, or any claim or Lien which Administrative Agent in good faith believes might be prior hereto, shall be conclusive between the parties as to the legality and amount so paid, and Administrative Agent shall be subrogated to all rights, equities and liens discharged by any such expenditure to the fullest extent permitted by law.
Further Assurance of Title. If at any time Administrative Agent has reason to believe in its reasonable opinion that any Advance is not secured or will or may not be secured by the Mortgage as a first priority Lien or security interest on the Facility (subject only to the Permitted Encumbrances), then Borrower shall, within 10 days after written notice from Administrative Agent, take such actions as are reasonably requested by Administrative Agent (including execution and delivery to Administrative Agent of all further documents and performance of all other acts that Administrative Agent reasonably deems necessary or appropriate) to assure to the satisfaction of Administrative Agent that any Advance previously made hereunder or to be made hereunder is secured or will be secured by the Mortgage as a first priority Lien or security interest with respect to the Facility (subject only to the Permitted Encumbrances). Administrative Agent, at its option, may decline to make further Advances hereunder until it has received such assurance.

4.07 Facility Lease.

(a) Affirmative Covenants. Borrower shall (i) duly and punctually observe, perform and discharge in all respects the obligations, terms, covenants, conditions and warranties of Borrower as landlord under the Facility Lease and as set forth in the Work Letter, (ii) give prompt notice to Administrative Agent of any failure on the part of Borrower to observe, perform and discharge any material obligation or of any written claim made by the Facility Lessee of any such failure by Borrower, (iii) enforce the performance of each and every obligation, term, covenant, condition and agreement in the Facility Lease to be performed by Facility Lessee and under the Work Letter, (iv) appear in and defend any action or proceeding arising under, occurring out of or in any manner connected with the Facility Lease or the Work Letter or the obligations, duties or liabilities of Borrower and Facility Lessee thereunder, do so in the name and on behalf of Administrative Agent (for the benefit of the Secured Parties) upon request by Administrative Agent, but at the expense of Borrower, and pay all costs and expenses of Administrative Agent, including reasonable attorneys’ fees and disbursements, in any action or proceeding in which Administrative Agent may appear, (v) at the request of Administrative Agent, in confirmation of the assignment and transfer contemplated by the Assignment of Leases and Consent, execute and deliver to Administrative Agent assignments and transfers of all future leases of the Facility upon the same terms and conditions as contained in the Assignment of Leases and Consents, (vi) make, execute and deliver to Administrative Agent upon demand and at any time or times, any and all assignments and other documents and instruments which Administrative Agent may deem advisable to carry out the true purposes and intent of the assignment set forth in the Assignment of Leases and Consents, (vii) give prompt notice to Administrative Agent of any default by Facility Lessee under the Facility Lease, (ix) promptly upon receipt by Borrower of any default, demand or other material notice from Facility Lessee, deliver a copy of such notice to Administrative Agent and (ix) simultaneously with delivery of any default, demand or other material notice to Facility Lessee, deliver a copy of such notice to Administrative Agent.
(b) **Negative Covenants.** Unless Borrower first obtains the written consent of Administrative Agent, Borrower shall not (i) cancel, terminate or consent to any surrender of the Facility Lease or Sublease, (ii) commence any action of ejectment or any summary proceedings for dispossession of Facility Lessee under the Facility Lease or Operator under the Sublease, (iii) modify or alter in any respect the terms of the Facility Lease or the Sublease, (iv) waive or release the Facility Lessee, Operator or any Guarantors from any obligations or conditions to be performed by Facility Lessee, Operator or such Guarantors, (v) enter into any lease of any part of the Mortgaged Property (other than the Facility Lease or Sublease) unless such lease is approved by Administrative Agent, (vi) renew or extend the term of the Facility Lease or Sublease, except as expressly pursuant to its terms, (vii) except for the Sublease or as otherwise required by the Facility Lease, consent to any subletting of the Improvements, or any portion thereof, or to any assignment of the Facility Lease or Sublease by Facility Lessee or the Sublease by Operator, (viii) receive or collect any Rents, all of which shall be paid directly to the Collateral Agent pursuant to and for application in accordance with the Collateral Account Pledge Agreement, (ix) further pledge, transfer, mortgage or otherwise encumber or assign future payments of Rents, or (x) waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge Facility Lessee, Operator, or any lessee under any Lease, of and from any material obligations, covenants, conditions and agreements to be kept, observed and performed by Facility Lessee, Operator or such lessee, including the obligation to pay Rents thereunder, in the manner and at the time and place specified therein or (xi) consent to any request by Facility Lessee under the Facility Lease that also requires the consent of any lender of Borrower pursuant to the express terms of the Facility Lease.

4.08 **Operations of Borrower.**

(a) Without limitation of any other provisions of this Agreement or any other Loan Document, Borrower hereby represents, warrants, covenants and agrees that it has not and shall not:

(i) engage in any business or activity other than the acquisition, development, construction, ownership, leasing, operation and maintenance of the Facility and the Borrower Collateral, and activities incidental thereto;

(ii) acquire or own any material asset other than the Facility, and such incidental personal property as may be necessary for the construction and operation of the Facility;

(iii) sell, lease (except pursuant to the Facility Lease or as otherwise permitted under this Agreement), exchange, convey, transfer, mortgage, assign, pledge or encumber, either voluntarily or involuntarily, or enter into an agreement to do so, of any right, title or interest of Borrower in or to the Borrower Collateral or any portion thereof;

(iv) merge into or consolidate with any Person or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case the prior written consent of Administrative Agent;
(v) fail to preserve its existence as a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of the State of Delaware and duly qualified to do business in the State of New York;

(vi) without the prior written consent of Administrative Agent, amend or modify (except as reasonably required to effectuate Permitted Transfers), terminate or fail to comply with the special purpose provisions of Borrower’s organizational documents;

(vii) own any subsidiary or make any investment in or acquire the obligations or securities of any other Person without the prior written consent of Administrative Agent;

(viii) have any member other than the Borrower Managing Member, the Borrower Non-Managing Members or Permitted Transferees or be owned or controlled, directly or indirectly, by any Person, other than 100%, direct or indirect, ownership and control by the Principals and Borrower Profit Participant, and any other Person that is a transferee in a Permitted Transfer;

(ix) commingle its assets with the assets of any of its partner(s), members, shareholders, Affiliates, or of any other Person or transfer any assets to any such Person other than distributions on account of equity interests in Borrower permitted hereunder and properly accounted for;

(x) incur any Indebtedness other than Permitted Indebtedness;

(xi) except pursuant to the Primary Completion Guaranty or the Secondary Completion Guaranty, allow any Person to pay its debts and liabilities or fail to pay its debts and liabilities solely from its own assets;

(xii) fail to maintain its records, books of account and bank accounts and financial statements separate and apart from those of the shareholders, partners, members, principals and Affiliates of Borrower, the affiliates of a shareholder, partner or member of Borrower, and any other Person, or if such financial statements are consolidated, fail to cause such financial statements to contain footnotes disclosing that the Borrower Collateral is actually owned by Borrower;

(xiii) except for the Development Agreement, the Equity Participation Agreement and the operating agreement of Borrower, enter into any contract or agreement with any shareholder, partner, member, principal or Affiliate of Borrower or any shareholder, partner, member, principal or Affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any shareholder, partner, member, principal or Affiliate of Borrower, or any shareholder, partner, member, principal or Affiliate thereof;

(xiv) seek dissolution or winding up, in whole or in part;
(xv) fail to use reasonable efforts to correct any known misunderstandings regarding the separate identity of Borrower;

(xvi) hold itself out to be responsible or pledge its assets or credit worthiness for the Indebtedness of another Person or allow any Person to hold itself out to be responsible; or pledge its assets or credit worthiness for the Indebtedness of Borrower (except pursuant to the Loan Documents);

(xvii) make any loans or advances to any third party (other than the Facility Lessee Loan) or pay any fees (other than the Developer Fee, the asset management fee described in the Equity Participation Agreement, fees payable to Administrative Agent or the Lenders, as expressly contemplated by the Project Budget or permitted under the Collateral Account Pledge Agreement), to any shareholder, partner, member, Principal or any Affiliate thereof;

(xviii) fail to file its own tax returns or to use separate contracts, purchase orders, stationery, invoices and checks;

(xix) fail either to hold itself out to the public as a legal entity separate and distinct from any Person or to conduct its business solely in its own name in order not (i) to mislead others as to the entity with which such other party is transacting business, or (ii) to suggest that Borrower is responsible for the Indebtedness of any third party (including any shareholder, partner, member, principal or affiliate of Borrower, or any shareholder, partner, member, principal or Affiliate thereof); provided that in performing its duties under the Development Agreement, [*] may use its own name and letterhead but will use commercially reasonable efforts to insure that its identity and the identity of the Borrower are kept separate and distinct;

(xx) fail to allocate fairly and reasonably among Borrower and any third party (including, without limitation, any member) any overhead, shared office space or other overhead and administrative expenses;

(xxi) allow Borrower to have any employees;

(xxii) file a voluntary petition or otherwise initiate proceedings seeking liquidation, reorganization or other relief under any Federal, state or foreign Debtor Relief Laws, for Borrower, or consent to the institution of any proceeding or petition under Debtor Relief Laws against Borrower, or file a petition seeking or consenting to reorganization or relief of Borrower or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of Borrower or of all or any substantial part of the properties and assets of Borrower or make any general assignment for the benefit of creditors of Borrower or admit in writing the inability of

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
Borrower to pay its debts generally as they become due or declare or effect a moratorium on Borrower debt or take any action in furtherance of any such action;

(xxiii) share any common logo with or hold itself out as or be considered as a department or division of (x) any shareholder, partner, principal, member or Affiliate of Borrower, (y) any Affiliate of a shareholder, partner, principal, member or Affiliate of Borrower, or (z) any other Person, or allow any Person to identify Borrower as a department or division of that Person; or

(xxiv) conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of Borrower or the creditors of any other Person.

(b) Borrower further represents, warrants, covenants and agrees that, prior to the Final Completion of the Facility each Principal shall devote such time and attention to the business of the Borrower as is reasonably expected to cause Borrower to timely perform its obligations hereunder and under the Loan Documents and the Project Documents to which Borrower is a party.

4.09 Appraisals. Administrative Agent shall have the right to order new Appraisals of the Facility from time to time. Each Appraisal is subject to review and approval by Administrative Agent. Borrower agrees upon demand to pay to Administrative Agent the cost and expense for such Appraisals and a fee for Administrative Agent’s review of each Appraisal. Borrower’s obligation to pay such cost and expense shall be limited to one Appraisal per year, unless the Appraisal is ordered after the occurrence of a Default or is required by Legal Requirement.

4.10 Operating and Reserve Accounts. Borrower shall maintain, and shall use commercially reasonable efforts to cause Facility Lessee to maintain, all Collateral Accounts with Collateral Agent pursuant to the Collateral Account Pledge Agreement.

4.11 Prohibited Distributions. Borrower shall not make any dividend or distribution to its members, or make any other payment to Persons holding a direct or indirect ownership interest in Borrower (in its capacity as such) except (a) under the Development Agreement or (b) in accordance with the Collateral Account Pledge Agreement.

4.12 Compliance with Legal Requirements.

(a) Borrower shall comply with all Legal Requirements, including Environmental Laws, applicable to it or its property (including, without limitation, the Loan Collateral and the Facility).

(b) Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

(c) Borrower will not request any Advance, and Borrower shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Advance (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent
such activities, businesses or transaction would be prohibited by Sanctions if conducted by a corporation incorporated in the United States, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

(d) Borrower shall not (a) be or become subject at any time to any law, regulation, or list of any Governmental Authority (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits the Lenders from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower, or (b) fail to provide documentary and other evidence of Borrower’s identity as may be requested by any Lender at any time to enable such Lender to verify Borrower’s identity or to comply with any applicable law or regulation, including, without limitation, section 326 of the USA Patriot Act of 2001, 31 U.S.C. section 5318.

(e) Notwithstanding any provision of this Agreement or any of the other Loan Documents to the contrary, no Default or Unmatured Default shall occur hereunder as a result of the failure of Borrower or the Property or Improvements to comply with any Legal Requirement, including, without limitation, Environmental Laws, so long as the following conditions are satisfied in the sole discretion of the Administrative Agent:

(i) Borrower, in good faith, has properly commenced and is diligently pursuing in an appropriate forum a legal proceeding contesting the applicability of such Legal Requirement to Borrower or the Facility and has so notified Lender;

(ii) Such contest will not impair the ability to ultimately comply with the contested Legal Requirement should the contest not be successful and the conduct of the contest will not impair Borrower’s ability to Substantially Complete the Facility by the Outside Facility Substantial Completion Date;

(iii) Borrower demonstrates to Administrative Agent’s satisfaction that Borrower has the financial capability to undertake and pay for such contest and any corrective or remedial action then or thereafter likely to be necessary;

(iv) None of Administrative Agent, Collateral Agent or any Lender is at risk for any criminal liability or any civil liability due to Borrower’s non-compliance with such Legal Requirement; and

(v) Borrower’s non-compliance with such Legal Requirement will not result in a Lien or charge on the Property or the Facility, the enforcement of which is not stayed by such contest or insured over to the satisfaction of Administrative Agent.

4.13 Government Regulation. Borrower shall not (a) be or become subject at any time to any law, regulation, or list of any Governmental Authority (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits the Lenders from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower, or (b) fail to provide documentary and other evidence of Borrower’s identity as may be requested by any Lender at any time to enable such Lender to verify Borrower’s identity or to comply with any applicable law or regulation, including, without limitation, section 326 of the USA Patriot Act of 2001, 31 U.S.C. section 5318.
4.14 Financial Information and Other Deliveries of Borrower.

(a) Deliverables by Facility Lessee. On or before the third (3rd) Business Day after Facility Lessee delivers to Borrower the materials described in Section 14 of the Facility Lease, Borrower shall deliver copies of such materials to Administrative Agent. In addition to the foregoing, but without duplication, Borrower shall deliver (or cause to be delivered) to Administrative Agent each of those items described in subsections (b) – (e) below.

(b) Monthly Reports. Within 30 days after each calendar month, Borrower shall furnish Administrative 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 Facility, together with an explanation of any variances, and (v) until Substantial Completion, 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 Plans and Specifications, the Project Budget and/or the Construction Schedule delivered on the Closing Date, whether or not the same are permitted to be made without Administrative Agent’s consent, since the date of the last report and (B) all Project Costs and Facility Lessee Project Costs incurred for the applicable month and in the aggregate, by line item, with a comparison of the budgeted Project Costs and Facility Lessee Project Costs and the actual Project Costs and Facility Lessee Project Costs, by line item. Borrower shall prepare and submit to Administrative Agent such other monthly financial statements and reports as Administrative Agent may reasonably require. All financial statements shall be in a format reasonably satisfactory to Administrative 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 Administrative 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 Medicare/Medicaid receivable or other 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) Quarterly and Annual Reports. (i) No later than 45 days after the end of each of the first three calendar quarters, Borrower shall furnish Administrative Agent with a copy of Borrower’s quarterly financial statements for the prior calendar quarter, and (ii) no later than April 30 of each year, Borrower shall furnish Administrative Agent with a copy of Borrower’s audited annual financial statements for the prior calendar year, which shall be audited by Anchin, Block & Anchin or another independent certified public accounting firm consented to by Administrative Agent. Both quarterly and annual statements shall include an income statement of the Borrower, cash flow statement of the Borrower and balance sheet of the Borrower, and be accompanied by a certificate from an officer or authorized signatory of Borrower that there is no Default or Unmatured Default.
(d) **Operating Budget.** No later than December 1 of each year, Borrower shall prepare (or cause to be prepared) and shall deliver to Administrative Agent for Administrative Agent’s review and approval the proposed operating budget for the Facility for the succeeding calendar year, along with all supporting documentation; and once approved by Administrative 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 Operating Budget (or any changes to any Budget) described in the Facility Lease without the prior written consent of Administrative Agent. In addition, Borrower shall submit to Administrative Agent for Administrative Agent’s review and approval any proposed modification or amendment to any Operating Budget, along with all supporting documentation. Borrower acknowledges and agrees that any proposed modification or amendment to any such operating budget shall be subject to the Approval of Administrative Agent in good faith, in Administrative Agent’s sole and absolute discretion.

(e) **Audits.** Administrative Agent shall have the right at any time and from time to time to audit the financial information provided by Borrower pursuant to the terms of this Agreement in accordance with the then customary audit policies and procedures of Administrative Agent using auditors selected by Administrative Agent. Administrative Agent shall pay for the cost of its auditors; **provided, however,** if (A) such audit shall have been commenced during a Default or Unmatured Default, or (B) such audit reveals a material discrepancy from the information previously provided to Administrative Agent, Borrower shall pay the out-of-pocket costs and expenses of such audit.

(f) **Maintenance of Books and Records.** Borrower shall keep and maintain separate books and records with respect to the Facility. Borrower will allow Administrative Agent or its representatives, 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 relating vouchers or papers kept by or on behalf of Borrower or its representatives or Administrative Agent in connection with maintenance, ownership, operation or leasing of the Facility, such access to include the rights to make extracts or copies thereof. At Administrative Agent’s request, Borrower shall also cause all of the financial information, statements, certificates and reports required to be delivered to Administrative Agent pursuant to this **Section 4.13** to be delivered to Administrative Agent in electronic format.

(g) **Notice of Litigation.** Borrower shall give prompt written notice to Administrative Agent of any litigation, governmental proceedings or investigations pending or, to Borrower’s knowledge, threatened, against Borrower or Guarantor that is reasonably likely to adversely affect the Borrower Collateral or the Facility or Borrower’s or Guarantor’s ability to perform the Obligations under the Loan Documents.

(h) **Notice of Environmental Matters.** Borrower shall immediately notify Administrative Agent should Borrower become aware of (i) any Hazardous Substance or other environmental problem or liability with respect to the Facility (including, without limitation, that the Mortgaged Property or the Improvements or any part of the Facility does not comply with any Environmental Law or the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Facility that could cause the Facility or any portion thereof to fail to comply with any Environmental Law or (ii) any private or governmental Lien or judicial or administrative notice or action pending or threatened relating to Hazardous Substances or the environmental condition of the Facility.
(i) **Notice of Defaults**. Borrower shall immediately notify Administrative Agent, in writing, of the occurrence of, or the receipt of any notice of, any Default hereunder, any default under any Project Document, including any default, notice of lien or demand for past due payment from the Contractor, any laborer, subcontractor or materialman or any Project Party.

(j) **Ownership of Personalty**. Borrower shall furnish to Administrative Agent, if so requested, photocopies of the fully executed contracts, bills of sale, receipted vouchers and agreements, or any of them, under which Borrower claims title to the materials, items, fixtures and other personal property used or to be used in the construction or operation of the Facility.

(k) **Other Information**. Borrower shall deliver to Administrative Agent such other information and materials with respect to Borrower, the Borrower Collateral, the Facility, each Guarantor, or compliance with the terms of this Agreement, as Administrative Agent or any Lender may reasonably request.

4.15 **ERISA**.

(a) **Plan Assets; Compliance; No Material Liability**. Borrower hereby covenants and agrees that (i) Borrower shall not use any Plan Assets to repay or secure the Obligations, (ii) no assets of Borrower are or will be Plan Assets, (iii) each Employee Benefit Plan will be in material compliance with all applicable requirements of ERISA and the Code except to the extent any defects can be remedied without material liability to Borrower under Revenue Procedure 2008-50 or any similar procedure, and (iv) Borrower will not have any material liability under Title IV of ERISA or section 412 of the Code with respect to any Employee Benefit Plan.

(b) **Transfer of Interests**. In addition to the prohibitions set forth in this Agreement and the other Loan Documents, and not in limitation thereof, Borrower hereby covenants and agrees that Borrower shall not assign, sell, pledge, encumber, transfer, hypothecate or otherwise dispose of its interests or rights (direct or indirect) in any Loan Document or any portion of the Borrower Collateral or attempt to do any of the foregoing or suffer any of the foregoing, or permit any party with a direct or indirect interest or right in any Loan Document or any portion of the Borrower Collateral to do any of the foregoing, if such action would cause this Agreement, any of the other Loan Documents, or the Obligations or the exercise of any of Administrative Agent’s or any Lender’s rights in connection therewith, to constitute a prohibited transaction under ERISA or the Code (unless Borrower furnishes to Administrative Agent a legal opinion satisfactory to Administrative Agent that the transaction is exempt from the prohibited transaction provisions of ERISA and the Code) or would otherwise result in the Borrower Collateral, or assets of Borrower or any Guarantor being Plan Assets.
(c) **Indemnity.** Borrower hereby agrees to indemnify, defend and hold harmless Administrative Agent, each Lender, their respective affiliates, and each of their shareholders, directors, officers and employees against all losses, claims, damages, penalties, judgments, liabilities and expenses (including, without limitation, all expenses of litigation or preparation therefor whether or not Administrative Agent, any Lender or any Affiliate is a party thereto including an enforcing of the foregoing indemnification) which any of them may actually pay or incur by reason of the investigation, defense and settlement of claims and in obtaining any prohibited transaction exemption under ERISA or the Code necessary in Administrative Agent’s or any Lender’s judgment by reason of the inaccuracy of the representations and warranties set forth in Section 6.01(i) hereof or a breach of the provisions set forth in this Section 4.17. The obligations of Borrower under this Section 4.17 shall survive the termination of this Agreement.

4.16 **Application of Loan Proceeds.** Borrower shall use the proceeds of the Loan solely and exclusively for the purposes of constructing the Facility, the repayment of the Facility Lessee Reverse Loan in accordance herewith and in accordance with the Project Budget, which shall be subject to no change except as expressly permitted in this Agreement. Borrower will receive the Advances to be made hereunder and will hold the right to receive the same as a trust fund for the purpose of paying the costs of the Facility, and it will apply the same first to such payment before using any part thereof for any other purpose.

4.17 **Further Assurances.** Borrower shall, at Borrower’s sole cost and expense:

(a) execute and deliver to Administrative Agent such documents, instruments, certificates, assignments and other writings, and do such other acts reasonably necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Obligations of Borrower under the Loan Documents, as Administrative Agent may reasonably require;

(b) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Administrative Agent shall reasonably require; and

(c) furnish to Administrative Agent all instruments, documents, certificates, plans and specifications, appraisals, title and other insurance, reports and agreements and each and every other document and instrument reasonably required to be furnished by the terms of this Agreement or the other Loan Documents, all at Borrower’s expense.

4.18 **Alterations.**

(a) So long as the Facility Lease shall be in effect, Borrower shall not make or permit any alteration to the Facility except as requested by Facility Lessee and permitted under the Facility Lease and shall not consent to any other unpermitted alteration without the prior written consent of the Administrative Agent.

(b) At any time the Facility Lease is not in effect, Administrative Agent’s prior written approval shall be required in connection with any alterations to the Facility that may (i) have a Material Adverse Effect, (ii) adversely affect the use or operation of the Facility, (iii) adversely
affect any structural component of any part of the Facility, any utility or HVAC system contained in the Facility or the exterior of any building constituting a part of the Facility or (iv) have an aggregate cost in excess of $1,500,000 (the “Alteration Threshold”). If the total unpaid amounts incurred and to be incurred with respect to any such alterations to the Improvements shall at any time exceed the Alteration Threshold, Borrower shall, upon notice from Administrative Agent, promptly deliver to Administrative Agent as security for the payment of such amounts and as additional security for Borrower’s obligations under the Loan Documents, cash or other securities acceptable to Administrative Agent. Such security shall be in an amount equal to the excess of the total unpaid amounts incurred and to be incurred with respect to alterations to the Improvements over the Alteration Threshold.

(c) Notwithstanding anything to the contrary contained herein, the initial construction of the Facility in accordance with the Plans and Specifications shall not constitute “alterations” to the Facility and will not be subject to the terms of this Section 4.18.

4.19 Property Management Agreement. Borrower shall not enter into any agreement relating to the management or operation of the Facility without the express written consent of Administrative Agent and on terms and conditions approved by the Administrative Agent.

4.20 The Development Agreement.

(a) Restrictions on the Development Agreement. Other than the Development Agreement, Borrower shall not enter into any agreement for the provision of development and construction management services with respect to the Property and the Facility without the express written consent of Administrative Agent. Borrower shall (a) diligently perform and observe all of the terms, covenants and conditions of the Development Agreement on its part to be performed and observed, (b) promptly notify Administrative Agent of any notice to Borrower of any default by Borrower in the performance or observance of any of the terms, covenants or conditions of the Development Agreement on the part of the Borrower to be performed and observed and (c) promptly notify Administrative Agent of any default by the Developer in the performance or observance of any of the terms, covenants or conditions of the Development Agreement on the part of the Developer to be performed and observed. If Borrower shall default in the performance or observance of any material term, covenant or condition of the Development Agreement on the part of Borrower to be performed or observed, then, without limiting Administrative Agent’s other rights or remedies under this Agreement or the other Loan Documents, and without waiving or releasing Borrower from any of its Obligations hereunder or under the Development Agreement, Administrative Agent shall have the right, but shall be under no obligation, to pay any sums and to perform any act as may be appropriate to cause all the material terms, covenants and conditions of the Development Agreement on the part of Borrower to be performed or observed.

(b) Prohibition Against Termination or Modification. Borrower shall not surrender, terminate, cancel, modify, renew or extend the Development Agreement, or enter into any other agreement for the provision of development and construction management services with respect to the Property and the Improvements with the Developer or any other Person, or consent to the assignment by the Developer its interest under the Development Agreement, in each case without the express written consent of Administrative Agent.
(c) **Replacement of Developer.** Administrative Agent shall have the right to require Borrower to terminate the Development Agreement and replace the Developer with a Person chosen by Borrower and approved by Administrative Agent or, at Administrative Agent’s option, selected by Administrative Agent in its sole discretion, upon the occurrence of any one or more of the following events: (a) a Material Default, (b) the Developer becoming bankrupt or insolvent, or (c) the occurrence of a material default under the Development Agreement beyond any applicable grace or cure periods.

**ARTICLE V**

**COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT**

5.01 **Project Documents.**

(a) **Collateral Assignment and Security Agreement.** As security for the Obligations, Borrower hereby sells, assigns, transfers, sets over to, and grants to Collateral Agent, a security interest in, all of its right, title and interest in and to the Borrower Collateral, and in furtherance thereof, Borrower hereby sells, assigns, transfers, sets over and grants to Collateral Agent, for the benefit of the Secured Parties, a security interest in, all of its right, title and interest in and to each Project Documents, whether now owned or hereafter acquired. Borrower confirms the grants of security interest and liens under the Building Loan Mortgage, the Project Loan Mortgage, and the Collateral Account Pledge Agreement, and with respect to specific Project Documents, Borrower hereby confirms the grant of such security interest and liens under the applicable Assignment and Consent.

(b) **Performance; No Advance Payments; Enforcement.** Borrower shall perform and observe in a timely manner all covenants, conditions, obligations and agreements on the part of Borrower to be performed or observed under the Project Documents. Borrower shall not waive, excuse, condone or in any manner release or discharge any party to a Project Document from any covenants, conditions, obligations or agreements to be performed or observed by such party under such Project Document, as applicable, but shall, at its sole cost and expense, enforce and secure the performance of all covenants, conditions, obligations and agreements to be observed by all parties under the Project Documents.

(c) **Remedies Upon Default.** Upon the occurrence and during the continuance of a Default, Collateral Agent shall have the right, but not the obligation, and Borrower hereby authorizes Collateral Agent to enforce Borrower’s rights under the Project Documents and to receive the performance of any other Person that is a party to the Project Documents. Borrower hereby agrees to pay, within 5 Business Days after demand, all such sums so paid and expended by Collateral Agent together with interest thereon from the day of such payment at the Default Rate.

(d) **Notices of Default.** Borrower shall send to Administrative Agent and Collateral Agent a copy of any written notice of demand or default or breach of or under the Project Documents that Borrower sends to (such notice to Administrative Agent and Collateral Agent to be sent simultaneously therewith) or receives from (such notice to Administrative Agent and Collateral Agent to be sent immediately upon receipt by Borrower thereof) any Person that is a party to any Project Document.
(e) **Power of Attorney.** Effective upon the occurrence and during the continuance of a Default, Borrower hereby irrevocably constitutes and appoints Collateral Agent as its attorney-in-fact, coupled with an interest, to demand, receive and enforce Borrower’s rights with respect to the Project Documents, to give appropriate receipts, releases and satisfactions for and on behalf of Borrower and to do any and all acts in the name of Borrower or in the name of Administrative Agent with the same force and effect as if Borrower had performed such acts.

(f) **License.** Provided no Default has occurred and is continuing, Borrower shall have the right under a license granted hereby to exercise its rights under the Project Documents. The license granted hereby shall be revoked at Administrative Agent’s option upon written notice from Collateral Agent to Borrower after the occurrence and during the continuance of a Default.

(g) **No Assumption of Liability.** None of Administrative Agent, Collateral Agent or any Lender assume any of Borrower’s obligations or duties under the Project Documents, including, without limitation, the obligation to pay for services rendered thereunder.

(h) **Validity and Enforceability of Project Documents.** Borrower represents and warrants that, to Borrower’s actual knowledge, the Project Documents are valid, binding and enforceable (subject to Debtor Relief Laws and general equitable principles), are in full force and effect, and there are no breaches or defaults thereunder and no events have occurred which with notice and/or lapse of time will constitute a breach or default thereunder by Borrower or any Affiliate of Borrower. Borrower represents and warrants that it has full power, right and authority to execute and enter into the Project Documents.

(i) **No Prior Conveyance or Limiting Actions.** Borrower represents and warrants that it has not previously conveyed, transferred or assigned the Project Documents or any right, title or interest therein and has not executed any other instrument which might prevent or limit Collateral Agent from operating under the terms and provisions of the assignment contemplated hereby, and Borrower covenants and agrees not to do any of the foregoing.

(j) **Execution and Amendment of Project Documents.** Borrower represents and warrants that, as of the date hereof, the documents identified in the definition of “Project Documents” are the only agreements (other than the Loan Documents) relating to the ownership, financing, development or operation of the Facility to which Borrower or Facility Lessee is a party or beneficiary. Borrower shall not enter into any other Project Document, or alter, amend or change in any respect, or terminate or cancel, any Project Document, in each case without obtaining Administrative Agent’s prior written consent. Administrative Agent may require, as a condition to its approval of a Project Document hereafter entered into, the execution by the contracting party of an agreement, in form and substance reasonably acceptable to Administrative Agent, whereby said contracting party (i) acknowledges the provisions of this Section 5.01, (ii) subordinates its claims against Borrower to payment in full of the Obligations and to the rights of Administrative Agent under the Loan Documents and (iii) agrees that upon the occurrence and during the continuance of a Default, Administrative Agent has the right (but not the obligation) to enforce Borrower’s rights under the subject Project Document and/or to terminate the subject Project Document.
5.02 Plans and Specifications and Permits.

(a) **Collateral Assignment and Security Agreement**. As additional security for the Obligations, Borrower hereby sells, assigns, transfers and sets over to Collateral Agent, for the benefit of the Secured Parties, and grants to Collateral Agent, for the benefit of the Secured Parties, a security interest in, all of Borrower’s right, title and interest in and to the Plans and Specifications and all Permits.

(b) **Remedies Upon Default**. Upon the occurrence and during the continuance of a Default, Administrative Agent shall have the right but not the obligation, and Borrower hereby authorizes Administrative Agent, to enforce Borrower’s rights with respect to the Plans and Specifications and the Permits.

(c) **Power of Attorney**. Effective upon the occurrence and during the continuance of a Default, Borrower hereby irrevocably constitutes and appoints Collateral Agent as its attorney-in-fact, coupled with an interest, to demand, receive and enforce Borrower’s rights with respect to the Plans and Specifications and the Permits, to give appropriate receipts, releases and satisfactions for and on behalf of Borrower and to do any and all acts in the name of Borrower or in the name of Collateral Agent with the same force and effect as if Borrower had performed such acts.

(d) **License**. Provided no Default has occurred and is continuing, Borrower shall have the right under a license granted hereby to exercise its rights with respect to the Plans and Specifications and the Permits. The license granted hereby shall be revoked at Administrative Agent’s option upon written notice from Collateral Agent to Borrower after the occurrence and during the continuance of a Default.

(e) **No Assumption of Liabilities**. None of Administrative Agent, Collateral Agent or any Lender assume any of Borrower’s obligations or duties with respect to the Plans and Specifications or the Permits, including, without limitation, the obligation to pay for the preparation or issuance thereof.

(f) **No Prior Conveyance or Limiting Action**. Borrower represents and warrants that it has not previously conveyed, transferred or assigned the Plans and Specifications or the Permits or any right, title or interest therein and has not executed any other instrument which might prevent or limit Administrative Agent and Collateral Agent from operating under the terms and provisions of the assignment contemplated hereby, and Borrower covenants and agrees not to do any of the foregoing.

5.03 **Reassignment**. Upon the indefeasible payment by Borrower in full of all of the Obligations and termination of the Commitments, all of Collateral Agent’s interest in the Project Documents shall automatically be deemed reassigned to Borrower (or terminated if so requested by Borrower) and Collateral Agent shall have no further interest therein. Upon written request from Borrower, Collateral Agent shall, at Borrower’s expense, execute such documentation as is reasonably necessary to reassign or terminate such interest without representation or warranty, express or implied, and without recourse in any event to Collateral Agent.
ARTICLE VI
REPRESENTATIONS AND WARRANTIES

6.01 Representations and Warranties. As a material inducement to Administrative Agent, Collateral Agent and the Lenders to enter into this Agreement, and as an express condition to each Advance made hereunder, Borrower hereby represents and warrants, as follows:

(a) Existence; Power and Authority. Borrower is a limited liability company duly formed and validly existing in the State of Delaware and authorized to do business as a foreign limited liability company in and in good standing under the laws of the States of New York, with requisite power and authority to (i) incur the Obligations, and (ii) execute, deliver and perform this Agreement and the other Loan Documents to which it is a party.

(b) Authorization; No Conflict. Borrower’s execution and delivery to Administrative Agent of this Agreement and the other Loan Documents and the Project Documents to which it is a party and the full and complete performance of the provisions thereof (i) are authorized by Borrower’s operating agreement; (ii) have been duly authorized by all requisite member actions; (iii) do not require the approval or consent of any Governmental Authority having jurisdiction over Borrower or any of the Borrower Collateral; and (iv) will not result in any breach of, or constitute a default under, or result in the creation of any Lien (other than those contained in any of the Loan Documents or Project Documents) upon any property or assets of Borrower under any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument or agreement to which Borrower or any of the Borrower Collateral is bound.

(c) Title. Borrower is the sole legal and beneficial owner of the Borrower Collateral free and clear of all Liens other than the Permitted Encumbrances. The Mortgage, when properly recorded in the appropriate records, and any Uniform Commercial Code financing statements required to be filed in connection therewith, will create a valid, first priority, perfected Lien on that portion of the Borrower Collateral constituting real property, subject only to the Permitted Encumbrances. There are no mechanics’, materialmen’s or other similar Liens or claims which have been filed for work, labor or materials affecting the Facility or any portion thereof. None of the Permitted Encumbrances, individually or in the aggregate, will have a Material Adverse Effect.

(d) Financial Statements. Any and all balance sheets, statements of income or loss, and financial statements heretofore furnished to Administrative Agent with respect to Borrower and each Guarantor are true and correct in all material respects as of the dates thereof, and fully and accurately present the financial condition of the subjects thereof as of the dates thereof, and no material adverse change has occurred in the financial condition reflected therein since the dates of the most recent thereof. Neither Borrower nor any Guarantor has any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments which are reasonably likely to result in a material adverse effect on the Borrower Collateral or the development, construction or operation of the Improvements as
contemplated by the Loan Documents or on the financial condition of Borrower or each Guarantor, or their respective abilities to perform their obligations under the Loan Documents and the Project Documents.

(e) **Litigation.** There are no actions, suits or other legal proceedings pending, or to the actual knowledge of Borrower, threatened, against or affecting Borrower, the Borrower Collateral, or each Guarantor which (i) if adversely determined would materially and adversely affect the ability of Borrower or such Guarantor to perform its respective obligations under the Loan Documents or Project Documents or would have a material adverse effect on the use or value of the Borrower Collateral, or (ii) challenge the validity or enforceability of the Loan Documents or the priority of the Lien and security interest created thereby.

(f) **Legal Compliance.** The Plans and Specifications for the Improvements and the specifications for the Proton System have been approved by all applicable Governmental Authorities, and upon Completion of the Facility in accordance with the Plans and Specifications and such Proton System specifications, the Facility and the use and occupancy thereof will comply in all respects with all applicable Legal Requirements and the Use Restrictions. Neither the zoning nor any other right to construct, use or operate the Facility is to any extent dependent upon or related to any real estate other than the Property. All approvals, licenses and permits required from Governmental Authorities under applicable Legal Requirements in connection with the current phase of construction of the Improvements have been obtained and Borrower has no knowledge of any information suggesting that approvals, licenses and permits for future phases of construction will not be received in a timely manner.

(g) **Services and Utilities.** All streets, easements, utilities and related services necessary for the construction of the Improvements and the operation thereof for their intended purpose are, or when required, will be, available to the Facility.

(h) **Enforceability.** Each Loan Document and Project Document executed by Borrower constitutes a legal and binding obligation of, and is valid and enforceable against, Borrower in accordance with the terms thereof (subject to Debtor Relief Laws and general equitable principles) and is not subject to any right of rescission, set-off, counterclaim or defense.

(i) **ERISA.** Borrower is not an “employee benefit plan” as defined in section 3(3) of ERISA or a “plan” as defined in section 4975(e)(1) of the Code.

(j) **Legal Parcel; Separate Tax Parcel.** The Property is taxed separately and does not include any other property, and for all purposes the Property may be mortgaged, conveyed and otherwise dealt with as a separate legal parcel.

(k) **Leases and Rents.** Borrower has good and marketable title to the Facility Lease and all rents thereunder, free and clear of all claims and Liens. The Facility Lease is valid and unmodified and is in full force and effect, and neither Borrower nor the Facility Lessee is in default of any of the terms or provisions of the Facility Lease. The rents now due or to become due have been or will be paid directly to the Collateral Agent pursuant to the Collateral Account Pledge Agreement and have not been waived or released, discounted, set off or otherwise discharged or compromised.

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(l) **Project Budget.** To the best of Borrower’s knowledge, the Project Budget accurately reflects all costs to acquire the Property, construct the Improvements, and acquire and install the Proton System by the Outside Facility Substantial Completion Date.

(m) **Construction Schedule.** To the best of Borrower’s knowledge, the Construction Schedule is complete and accurate.

(n) **Compliance with Laws and Agreements.** Borrower is in compliance with (i) its operating agreement or other organizational documents, (ii) all Legal Requirements applicable to it or its property (including, without limitation, the Borrower Collateral and the Facility) and (iii) all Loan Documents, all Project Documents and any other agreement or instrument to which it is a party. No Default or Unmatured Default has occurred and is continuing.

(o) **Sanctions.**

(i) Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Subsidiaries and their respective officers and employees and to the knowledge of the Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects.

(ii) None of Borrower, or any of its members or their members, partners, shareholders, directors, officers, brokers or other agents acting or benefiting in any capacity in connection with this Agreement or any other capital raising transaction involving any Lender, or any of its Affiliates is a Sanctioned Person. No Borrower use of proceeds or other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions.

(iii) None of the funds or assets of Borrower that are used to pay any amount due pursuant to this Agreement shall constitute funds obtained from transactions with or relating to Sanctioned Persons or countries which are the subject of sanctions under any Sanctions.

(p) **Condemnation.** No condemnation or similar proceeding has been commenced or, to Borrower’s knowledge, is contemplated with respect to all or any portion of the Facility or for the relocation of roadways providing access to the Facility.

(q) **Insurance.** Borrower has obtained and has delivered to Administrative Agent originals or certified copies of all of the insurance required pursuant to Article VII hereof, with all annual premiums prepaid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. As of the date hereof, no claims relating to the Facility have been made under any of the insurance policies required to be maintained pursuant to Article VII hereof and, to Borrower’s knowledge, no Person, including Borrower, has done, by act or omission, anything that would impair the coverage of any of such insurance in any material respect.
(r) **Governmental Approvals.** As of the date of hereof and as of each date on which this representation is deemed remade, Borrower shall have all Governmental Approvals necessary for the then current stage of construction of the Facility or any part thereof or the commencement or continuance of construction thereon, as the case may be, including, but not limited to, where appropriate, all required environmental permits, all of which are in full force and effect and not, to the knowledge of Borrower, subject to any revocation, amendment, release, suspension or forfeiture. As of the date of hereof and as of each date on which this representation is deemed remade, Borrower shall have obtained all Governmental Approvals from, and given all such notices to, and taken all such other actions with respect to such Governmental Authority as may be required under applicable Legal Requirements for the then current stage of construction of the Facility.

(s) **Flood Zone.** No portion of the Facility is located in an area identified by the Federal Emergency Management Agency as a special flood hazard area or, if so located, the flood insurance required under Section 7.01(a)(v) is in full force and effect.

(t) **Physical Condition.** Neither the Mortgaged Property nor any portion thereof is now damaged as a result of any fire, explosion, accident, flood or other casualty. Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in the Mortgaged Property, or any part thereof, which would 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.

(u) **Boundaries.** All of the Improvements lie wholly within the boundaries and building restriction lines of the Mortgaged Property, and no improvements on adjoining properties encroach upon the Mortgaged Property, and no easements or other encumbrances affecting the Mortgaged Property encroach upon any of the Improvements, so as to affect the value or marketability of the Mortgaged Property except those which are insured against under the Title Policy.

(v) **Filing and Recording Taxes.** All transfer Taxes, deed stamps, intangible Taxes, Taxes on personal property or other amounts in the nature of transfer or debt Taxes required to be paid under applicable Legal Requirements in connection with the transfer of the Mortgaged Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible, personal property or other similar Taxes required to be paid under applicable Legal Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Mortgage, have been paid or are being paid simultaneously hereewith. Subject to Borrower’s rights to contest same in accordance with this Agreement, all Taxes and governmental assessments due and owing in respect of the Facility have been paid, or an escrow of funds in an amount sufficient to cover such payments has been established hereunder or are insured against by the Title Policy issued in connection with the Mortgage.
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(w) Report; Compliance with Environmental Laws. Borrower has caused the preparation of (i) that certain Phase I Environmental Site Assessment of the Property, prepared by AECOM, dated as of January, 2014, as supplemented by that certain Limited Phase II Site Investigation, dated January 23, 2014, and (ii) that certain Phase I Environmental Site Assessment of the Property, prepared by The Vertex Companies, Inc., dated as of May 1, 2015 (Project No. 33788) (collectively, the “Report”), and except as disclosed in the Report, to the actual knowledge of Borrower, Borrower represents and warrants:

(i) The Facility and the Land are in full compliance with all Environmental Laws.

(iii) Neither Facility nor the Land are subject to any private or governmental Lien or the subject of any judicial or administrative notice or action pending, or to Borrower’s actual knowledge, threatened, relating to Hazardous Substances or the environmental condition of the Facility or the Land.

(iv) No Hazardous Substances are located on or have been stored, processed or disposed of on or released or discharged from (including ground water contamination) the Land, and no above or underground storage tanks exist on the Land. Borrower shall not allow any Hazardous Substances to be stored, located, discharged, possessed, managed, processed or otherwise handled on or in the Facility and shall comply with all Environmental Laws affecting the Land.

The Environmental Indemnity Agreement is incorporated herein by reference and shall be binding upon the Borrower as if fully set forth herein.

(x) Special Purpose Entity. The purpose of Borrower is limited solely to (i) purchasing, owning, developing, using and operating, leasing and subleasing the Facility as contemplated by the Project Documents, (ii) obtaining the Loans under this Agreement and the Project Loan Agreement, and (iii) transacting any and all lawful business that is incident, necessary and appropriate to accomplish the foregoing.

(y) Tax Filings. To the extent required, Borrower has filed (or has obtained effective extensions for filing) all federal, state and local income and all other federal and other material state and local Tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower. Borrower believes that its tax returns properly reflect the income and taxes of Borrower for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit.

(z) Solvency. Borrower has not entered into the transaction or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and Borrower has received reasonably equivalent value in exchange for its Obligations under the Loan Documents. Giving effect to the Loan, the fair saleable value of Borrower’s assets exceeds and will, immediately following the making of the Loan, exceed Borrower’s total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower aggregate assets is and will, immediately following the making of the Loan, be greater than Borrower’s
probable aggregate liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower’s assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur Indebtedness and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such Indebtedness and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower).

(aa) Federal Reserve Regulations. 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 purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

(bb) No Debt. Borrower has not incurred any Indebtedness other than the Obligations under the Loan Agreements and other Permitted Indebtedness.

(cc) Offices; Location of Books and Records. The chief executive office or chief place of business and the jurisdiction of organization (as such terms are used in Article 9 of the UCC as in effect in the State of New York from time to time) of Borrower is set forth on the first page hereof, or are as otherwise described in a notice from Borrower to Administrative Agent. Borrower’s organization number is 5459883 and Borrower’s federal employer identification number is 46-4431847. Borrower’s books of accounts and records are located at its chief executive office or its chief place of business, as applicable.

(dd) Project Documents.

(i) Construction Contract. As of the date of hereof and as of each date on which this representation is deemed remade: (a) the Construction Contract shall be in full force and effect; (b) the Construction Contract shall be in the name of Borrower; (c) Borrower and Contractor shall be in full compliance with their respective obligations under the Construction Contract, except where the failure to be in compliance will not have a Material Adverse Effect; (d) the work to be performed by Contractor under the Construction Contract shall be the work called for by the Plans and Specifications; and (e) all work on the Facility theretofore completed shall have been completed in accordance with the Plans and Specifications in a good and workmanlike manner and shall be free of any defects.

(ii) Architectural Services Agreement (Construction Administration). As of the date of hereof and as of each date on which this representation is deemed remade: (a) the Architectural Services Agreement (Construction Administration) shall be in full force and effect; (b) the Architectural Services Agreement (Construction Administration) shall be in the name of Borrower; (c) both Borrower and/or Developer, as the case may be, shall be in full compliance with their respective material obligations under the Architectural Services Agreement (Construction Administration); and (d) the work to be performed by Architect under the Architectural Services Agreement (Construction Administration) shall
include the architectural services required to design the Facility to be built in accordance with the Plans and Specifications and all architectural services required to complete the Facility in accordance with the Plans and Specifications is provided for under the Architectural Services Agreement (Construction Administration).

(iii) **Other Project Documents.** With respect to the Other Project Documents, (a) none of Borrower, Developer or Property Manager nor, to Borrower’s knowledge, any other party to any of such Project Documents is in default in the performance of, or compliance with, any material provisions under such Project Document, except where the failure to be in compliance will not have a Material Adverse Effect, (b) all permits or approvals required to have been obtained pursuant to the terms of the Project Documents through the date hereof have been so obtained and are in full force and effect as of the date hereof, (c) Borrower has caused to be delivered to Administrative Agent a true, correct and complete copy of each of the Project Documents (including all schedules, exhibits, annexes, amendments, supplements, modifications and all other documents delivered pursuant thereto or in connection therewith), (d) no material amendments or other modification have been made to any of the Project Documents since delivery to the Administrative Agent pursuant to this Agreement, and (e) each Project Document remains in full force and effect as of the date hereof. Developer and/or Borrower have not been requested to provide, and neither has provided, any letter of credit or other security with respect to its obligations pursuant to the any of the Project Documents.

(ee) **Plans and Specifications.** Borrower has furnished or made available to Administrative Agent true and complete sets of the Plans and Specifications which comply with all applicable Legal Requirements, all Governmental Approvals, the Use Restrictions and all other restrictions, covenants and easements affecting the Facility, and which have been prepared by the Architect, delivered to the Contractor and approved by each such Governmental Authority as is required for the current stage of construction of the Improvements.

(ff) **Zoning.** The land use and zoning regulations which are in effect for the Facility as of the date hereof permit the construction of the Facility thereon on an as-of-right basis and no variance, conditional use permit, special use permit or other similar approval is required for such construction or the use of the Facility as currently used and as contemplated by the Plans and Specifications.

(gg) **Easements.** All easements, restrictions, covenants or operating agreements which benefit or burden the Mortgaged Property are in full force and effect and, to Borrower’s knowledge, there are no defaults thereunder by any party thereto.

(hh) **Lien Waivers.** To the extent permitted by law, every contract or agreement providing for services, goods or materials entered into between Borrower and a third party in connection with the construction of the Facility contains a provision waiving and releasing any and all Liens or rights of Liens which may arise in any manner on the Mortgaged Property or any part thereof, and a provision which subordinates any Liens or any rights of Lien of such third party to the Lien of the Mortgage and the rights of Administrative Agent under the Mortgage.
(ii) **Full and Accurate Disclosure.** To Borrower’s knowledge, there has been no material adverse change in any condition, fact, circumstance or event that would make the financial statements, rent rolls, reports, certificates or other documents submitted in connection with the Loan inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects, or is reasonably likely to have a Material Adverse Effect.

(jj) **Foreign Person.** Borrower is not a “foreign person” within the meaning of section 1445(f)(3) of the Code.

(kk) **Investment Company Act.** Borrower is not (a) an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended; or (b) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended.

(ll) **Organizational Structure.** As of the date hereof, the organizational structure of Borrower is accurately reflected on the organizational chart annexed hereto as Exhibit L.

(mm) **ADA.** The Facility has been designed and shall be constructed and completed, and thereafter maintained, in strict accordance and full compliance with all of the requirements of the ADA.

6.02 **Nature of Representations and Warranties.** All representations and warranties made in this Agreement or any other Loan Document or in any certificate or other document delivered to Administrative Agent pursuant to or in connection with this Agreement shall be deemed (a) to have been relied upon by Administrative Agent, Collateral Agent and the Lenders notwithstanding any investigation heretofore or hereafter made by Administrative Agent or on its behalf and (b) continuing in effect at all times while Borrower remains indebted to the Lenders. Each Draw Request submitted to Administrative Agent as provided in this Agreement shall constitute an affirmation that the representations and warranties contained in this Agreement and in the other Loan Documents remain true and correct in all material respects as of the date of such Draw Request unless Borrower specifically notifies Administrative Agent of any material change therein; and unless Administrative Agent is notified to the contrary, in writing (or unless a representation and warranty is made only as of a specific date), prior to the disbursement of the requested Advance or any portion thereof, shall constitute an affirmation that the same remain true and correct in all material respects on the date of such disbursement and (c) to survive and continue for so long as any amount remains payable to Administrative Agent and the Lenders under this Agreement or any of the other Loan Documents.

**ARTICLE VII**

**INSURANCE AND CONDEMNATION**

7.01 **Insurance and Casualty.**
(a) **Required Insurance Coverage.** Borrower will cause Facility Lessee to maintain the insurance required by Section 13 of the Facility Lease and otherwise comply with the requirements set forth therein and will cause and Contractor to maintain the insurance required by the Construction Contract. In addition, but without duplication of such insurance, Borrower, at its expense, shall maintain and provide to Administrative Agent duplicate originals of policies of insurance providing the following:

(i) Commercial General Liability Insurance with limits of not less than $1,000,000 per occurrence combined single limit and $2,000,000 in the aggregate for the policy period, or in whatever higher amounts as may be required by Administrative Agent from time to time by notice to Borrower (with deductibles acceptable to Lender), and extended to cover: (a) Contractual Liability assumed by Borrower with defense provided in addition to policy limits for indemnities of the named insured, (b) if any of the work is subcontracted, Independent Contractors Liability providing coverage in connection with such portion of the work which may be subcontracted, (c) Broad Form Property Damage Liability, (d) Products & Completed Operations for coverage, such coverage to apply for two years following completion of construction, (e) waiver of subrogation against all parties named additional insured, (f) severability of interest provision, (g) Personal Injury & Advertisers Liability and (g) environmental liability.

(ii) Automobile Liability including coverage on owned, hired and non-owned automobiles and other vehicles, if used in connection with the performance of the work, with Bodily Injury and Property Damage limits of not less than $1,000,000.00 per occurrence combined single limit, with a waiver of subrogation against all parties named as additional insured.

(iii) Umbrella/Excess Liability in excess of Commercial General Liability, Automobile Liability and Employers’ Liability coverages which is at least as broad as these underlying policies with a limit of liability of $25,000,000.

(iv) All-Risk Property (Special Cause of Loss) Insurance including, without limitation, coverage for loss or damage to the Facility by fire and other perils including windstorm, earthquake/earth movement and malicious mischief, building ordinance extension endorsement (including cost of demolition, increased costs of construction and the value of the undamaged portion of the building and soft costs coverage), and boiler and machinery coverage (if separate policy, that policy must include loss of rents or business interruption coverage), as specified by Administrative Agent. The policy shall be in an amount not less than the full insurable value on a replacement cost basis of the Facility and personal property related thereto (without deduction for depreciation). If the policy is a blanket policy covering the Facility and one or more other properties, the policy must specify the dollar amount of the total blanked limit of the policy that is allocated to each property, and the amount so allocated to the Facility must not be less than the full insurable value on a replacement cost basis. During any construction period, such policy shall be written in the so-called “Builder’s Risk Completed Value Non-Reporting Form” with no coinsurance requirement and shall contain a provision granting the insured permission to occupy prior to completion. Such policy shall not contain an exclusion for terrorist losses unless Borrower shall procure a separate Terrorism policy covering Certified Acts of
Terrorism in an amount equal to the full replacement cost of the Facility, or the amount of the Loan, whichever is less. This policy must also list Collateral Agent as mortgagee and loss payee.

(v) If the Property, or any part thereof, lies within a “special flood hazard area” as designated on maps prepared by the Federal Emergency Management Agency (FEMA), a National Flood Insurance Program Standard Flood Insurance Policy (“SFIP”) and/or insurance from a private insurance carrier (which may substitute for or supplement, the SFIP) in form and substance acceptable to Administrative Agent covering the Facility, if applicable, for the duration of the Loans in the amount of the full insurable value of the Facility, if applicable, or the amount of the Loans, whichever is less.

(vi) Such other insurance coverages in such amounts as Administrative Agent may require, which may include, without limitation, errors and omissions insurance with respect to the contractors, architects and engineers.

(b) Policy Requirements; Insurance Consultant. All insurance policies shall (i) be issued by an insurance company licensed to do business in the state where the Facility is located having a rating of “A-” VIII or better by A.M. Best Co., in Best’s Rating Guide, (ii) name each Lender, Administrative Agent and Collateral Agent, and “any and all subsidiaries and their successors and/or assigns as their interests may appear”, as additional insureds on all liability insurance and Collateral Agent as mortgagee and loss payee on all All-Risk Property, flood insurance, and rent loss or business interruption insurance (whether or not required hereunder), (iii) be endorsed to show that Borrower’s insurance shall be primary and all insurance carried by Administrative Agent is strictly excess and secondary and shall not contribute with Borrower’s insurance, (iv) provide that Administrative Agent is to receive 30 days written notice prior to non-renewal or cancellation, (v) be evidenced by a certificate of insurance to be provided to Administrative Agent along with a copy of the policy for All-Risk Property coverage or such other evidence of insurance acceptable to Administrative Agent in its reasonable discretion, (vi) include either policy or binder numbers on the ACORD form, and (vii) be in form and amounts acceptable to Administrative Agent; provided, however, that with respect to any flood insurance required hereunder, acceptable proof of coverage shall not include certificates of insurance. Administrative Agent, at its option and upon notice to Borrower, may retain, at Borrower’s expense, an insurance consultant to review the insurance for the Facility to confirm that it complies with the terms and conditions set forth herein.

(c) Evidence of Insurance; Payment of Premiums. Borrower shall deliver to Administrative Agent, at least 5 days before the expiration of an existing policy, evidence acceptable to Administrative Agent of the continuation of the coverage of the expiring policy. If Administrative Agent has not received satisfactory evidence of such continuation of coverage in the time frame herein specified, Administrative Agent shall have the right, but not the obligation, to purchase such insurance for Administrative Agent’s and the Lenders’ interest only. Any amounts so disbursed by Administrative Agent pursuant to this Section shall be repaid by Borrower within 10 days after written demand therefor. Nothing contained in this Section shall require Administrative Agent to incur any expense or take any action hereunder, and inaction by Administrative Agent shall never be considered a waiver of any right accruing to Administrative Agent on account on this Section. The payment by Administrative Agent of any insurance premium for insurance which Borrower is obligated to provide hereunder but which Administrative Agent believes has not been paid, shall
be conclusive between the parties as to the legality and amounts so paid. Borrower agrees to pay all premiums on such insurance as they become due, and will not permit any condition to exist on or with respect to the Mortgaged Property which would wholly or partially invalidate any insurance thereon.

(d) **Collateral Protection.** Unless Borrower provides Administrative Agent with evidence satisfactory to Administrative Agent of the insurance coverage required by this Agreement, Administrative Agent may purchase insurance at Borrower’s expense to protect Administrative Agent’s and the Lenders’ interest in the Mortgaged Property. This insurance may, but need not, protect Borrower’s interest in the Mortgaged Property. The coverages that Administrative Agent purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Mortgaged Property. Borrower or Administrative Agent (as appropriate) may later cancel any insurance purchased by Administrative Agent, but only after Administrative Agent receives satisfactory evidence that Borrower has obtained insurance as required by this Agreement. If Administrative Agent purchases insurance for the Mortgaged Property, Borrower will be responsible for the costs of that insurance, including any charges imposed by Administrative Agent in connection with the placement of insurance, until the effective date of the cancellation or expiration of such insurance. The costs of the insurance may, at Administrative Agent’s discretion, be added to Borrower’s total principal obligation owing to Administrative Agent and the Lenders, and in any event shall be secured by the liens on the Mortgaged Property created by the Loan Documents. It is understood and agreed that the costs of insurance obtained by Administrative Agent may be more than the costs of insurance Borrower may be able to obtain on its own.

(e) **No Liability; Assignment.** Administrative Agent shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any such insurance, incur any liability for the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses, and Borrower hereby expressly assumes full responsibility therefor and all liability, if any, thereunder. Borrower hereby absolutely assigns and transfers to Collateral Agent for the benefit of the Secured Parties all of Borrower’s right, title and interest in and to any unearned premiums paid on policies and any claims thereunder and Administrative Agent and/or the Lenders shall have the right, but not the obligation, to assign any then existing claims under the same to any purchaser of the Mortgaged Property at any foreclosure sale. In the event of a foreclosure on the Mortgaged Property or other transfer of title to the Mortgaged Property in extinguishment in whole or in part of the Loans, all right, title and interest of Borrower in and to the insurance policies then in force and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Collateral Agent on behalf of the Lenders or other transferee in the event of such other transfer of title.

(f) **No Separate Insurance.** Borrower shall not carry any separate insurance on the Mortgaged Property concurrent in kind or form with any insurance required hereunder or contributing in the event of loss without Administrative Agent’s prior written consent, and any such policy shall have attached a standard non-contributing mortgagee clause, with loss payable to Collateral Agent for the benefit of the Secured Parties, and shall otherwise meet all other requirements set forth herein.

(g) **Casualty Loss.** If all or any part of the Mortgaged Property shall be damaged or destroyed by fire or other casualty, Borrower shall give immediate written notice and make a claim
to the insurance carrier and Administrative Agent. With respect to any such casualty loss for which Borrower has an insurance claim that exceeds $2,000,000, Borrower hereby authorizes and empowers Administrative Agent, at Administrative Agent’s option and in Administrative Agent’s sole discretion as attorney-in-fact for Borrower, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Administrative Agent’s expenses incurred in the collection of such proceeds; provided, however, that the foregoing authorization and empowerment of Administrative Agent to act as attorney-in-fact for Borrower shall not become effective until the occurrence and during the continuance of a Default or until such time as Borrower fails to diligently pursue the collection of such insurance proceeds if Administrative Agent elects not to pursue collection thereof in Administrative Agent’s opinion. The foregoing appointment is irrevocable, coupled with an interest and continuing so long as the Commitments or Obligations remain outstanding, and such rights, powers and privileges shall be exclusive in Administrative Agent (for the benefit of the Secured Parties), its successors and assigns.

As sole loss payee on all policies of casualty insurance, Collateral Agent shall receive all insurance proceeds from any casualty loss, and shall hold the same in an interest-bearing account pending disposition in accordance with this Section 7.01(g). Borrower authorizes Administrative Agent to deduct from such insurance proceeds received by Collateral Agent all of Collateral Agent’s costs and expenses (including, without limitation, reasonable attorneys’ fees) incurred in connection with the collection thereof (the remainder of such insurance proceeds being referred to herein as “Net Casualty Proceeds”).

Prior to Substantial Completion of the Facility, the Net Casualty Proceeds from any casualty loss affecting the Mortgaged Property shall be treated as a Non-Interest Balancing Deposit and disbursed in accordance with the provisions of Section 2.05 hereof if all of the following conditions are satisfied within 90 days after the applicable casualty loss: (A) Borrower satisfies Administrative Agent that the construction can be completed no later than 180 days after the Outside Facility Substantial Completion Date; and (B) Borrower delivers to Administrative Agent satisfactory evidence that the Lease will remain in full force and effect. Upon the occurrence and during the continuance of a Default or in the event Borrower is unable to satisfy the conditions set forth in subclauses (A) or (B) hereof by the required date, Administrative Agent, on behalf of the Lenders, shall have the right (but not the obligation) to apply all Net Casualty Proceeds held by it to the payment of the Obligations.

After Substantial Completion of the Facility, Administrative Agent shall cause the Net Casualty Proceeds from any casualty loss affecting the Mortgaged Property to be disbursed for the cost of reconstruction of the Mortgaged Property if all of the following conditions are satisfied within 90 days after the applicable casualty loss: (A) Borrower satisfies Administrative Agent that the reconstruction can be completed within a reasonable period of time after such casualty loss (but in no event later than the Maturity Date) and that after giving effect to such reconstruction the Mortgaged Property will be restored to its condition immediately prior to the casualty loss; (B) Borrower satisfies Administrative Agent that the Net Casualty Proceeds are sufficient to pay all costs of reconstruction, and if insufficient, Borrower deposits with Administrative Agent additional funds acceptable to Administrative Agent to make up such insufficiency; (C) Borrower delivers to Administrative Agent all plans and specifications and construction contracts for the work of reconstruction and such plans and specifications and construction contracts are in form and content
acceptable to Administrative Agent and with a contractor acceptable to Administrative Agent; and (D) the Facility Lease remains in full force and effect. The disbursement of Net Casualty Proceeds pursuant to this clause (iv) shall be in accordance with customary disbursement procedures and shall not be available after the occurrence and during the continuance of a Default. Any Net Casualty Proceeds not required to reconstruct the Mortgaged Property shall be delivered to Administrative Agent, for prepayment of the Obligation. Upon the occurrence and during the continuance of a Default or in the event Borrower is unable to satisfy the conditions set forth in subclauses (A) through (D) hereof by the required date, Administrative Agent, on behalf of the Lenders, shall have the right (but not the obligation) to apply all Net Casualty Proceeds held by it to the payment of the Obligations. Borrower shall have the obligation to promptly and diligently complete the work of reconstruction necessitated by any casualty loss and restore the Mortgaged Property to the equivalent of its condition immediately prior to such casualty provided the applicable Net Casualty Proceeds are made available to Borrower for such purpose.

7.02 Condemnation and Other Awards. Immediately upon receiving written notice of the institution or threatened institution of any proceeding for the condemnation of the Mortgaged Property or any part thereof, Borrower shall notify Administrative Agent of such fact. Borrower shall then file or defend its rights thereunder and prosecute the same with due diligence to its final disposition; provided, however, that Borrower shall not enter into any settlement of such proceeding without the prior written approval of Administrative Agent. Administrative Agent shall be entitled, at its option, to appear in any such proceeding in its own name on behalf of the Lenders, and upon the occurrence and during the continuance of a Default or if Borrower fails to diligently prosecute such proceeding, (a) Administrative Agent shall be entitled, at its option, to appear in and prosecute any such proceeding or to make any compromise or settlement in connection with such condemnation on behalf of Borrower, and (b) Borrower hereby irrevocably constitutes and appoints Administrative Agent as its attorney-in-fact, and such appointment is coupled with an interest, to commence, appear in and prosecute such action or proceeding or to make such compromise or settlement in connection with any such condemnation on its behalf. The foregoing appointment is irrevocable and continuing so long as the Commitments or Obligations remain outstanding, and such rights, powers and privileges shall be exclusive in Administrative Agent (for the benefit of the Secured Parties), its successors and assigns. If the Mortgaged Property or any material part thereof is taken or materially diminished in value in connection with such condemnation, or if a consent settlement is entered, by or under threat of such proceeding, the award or settlement payable to Borrower by virtue of its interest in the Mortgaged Property, shall be, and by these presents is, assigned, transferred and set over unto Collateral Agent for the benefit of the Secured Parties. Any such award or settlement shall be first applied to reimburse Administrative Agent and the Lenders for all costs and expenses, including reasonable attorneys’ fees, incurred in connection with the collection of such award or settlement. The balance of such award or settlement (the “Net Condemnation Proceeds”) shall be paid to Collateral Agent for the benefit of the Secured Parties for application in the manner set forth in Section 7.01(g) as if such award or settlement constituted insurance proceeds from a casualty loss; provided, however, that Administrative Agent shall have no obligation to make Net Condemnation Proceeds available for construction or reconstruction of the Mortgaged Property unless Administrative Agent has determined that the Mortgaged Property as so constructed or reconstructed after giving effect to the condemnation would have a value that is no less than its value would have been had there been no such condemnation. Borrower shall have the obligation to promptly and diligently complete the work of reconstruction necessitated by

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any condemnation and restore the Mortgaged Property to the equivalent of its condition immediately prior to such condemnation (or if the initial construction of the Improvements is not substantially complete at the time of such condemnation, continue the construction of the Improvements in accordance with the terms hereof) provided the applicable Net Condemnation Proceeds are made available to Borrower for such purpose.

7.03 Provisions of the Facility Lease to Govern. Notwithstanding anything to the contrary contained in Section 7.01 or Section 7.02, so long as Facility Lease shall be in full force and effect, Administrative Agent agrees to permit the use of Net Casualty Proceeds and Net Condemnation Proceeds consistently with the terms of the Facility Lease, if and to the extent Borrower is obligated under the Facility Lease to make such proceeds available for construction or reconstruction of the Facility. The remaining provisions of Section 7.01 and Section 7.02 shall apply to the extent that they are consistent with the terms of the Facility Lease. Any portion of Net Casualty Proceeds and/or Net Condemnation Proceeds not so made available for construction or reconstruction of the Facility or otherwise payable to Borrower pursuant to the Facility Lease shall be applied in accordance with the terms of Section 7.01 or Section 7.02, as the case may be.

ARTICLE VIII
DEFAULTS

8.01 Defaults. Any of the following events, after passage of the applicable cure period, if any, set forth below, shall constitute a “Default” hereunder:

(a) Failure to Pay Principal or Interest. The failure by Borrower to pay in full when due any principal of or interest on the Loans;

(b) Failure to Pay Other Amounts. The failure by Borrower to pay in full any fees or any other amounts due under the Loan Documents and upon which a notice has been given (other than interest or principal) and such failure continues unremedied for a period of 5 days after the due date thereof; or the failure by Borrower or any Loan Party to make any other payment or deposit required hereunder or under any of the other Loan Documents to which it is a party within the period set forth in Loan Documents, or if no period is set forth in the Loan Documents, then within 5 Business Days after demand therefor;

(c) Cross-Defaults. A “Default” occurs under the Project Loan Agreement; an “Event of Default” occurs under the Facility Lease, the Proton System Purchase Agreement or the Construction Contract; or an event occurs under any Project Document, the effect of which allows either counterparty thereto to suspend performance under or terminate such Project Document where such suspension or termination would have a Material Adverse Effect;

(d) Breach of Covenants. Any breach of the provisions of Section 4.01(b), 4.06(a), 4.08, 4.11 or 4.16 hereof;
(e) Involuntary Proceeding. An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of Borrower or any of their debts, or of a substantial part of any of their assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Borrower or for a substantial part of any of their assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(f) Voluntary Proceedings. Borrower shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (b) of this Section, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Borrower or for a substantial part of any of their assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(g) Assignment for Benefit of Creditors. The execution by Borrower of an assignment for the benefit of creditors;

(h) Unable to Pay Debts. The admission in writing by Borrower that it is unable to pay its debts as they mature or that it is generally not paying its debts as they mature;

(i) Liquidation of Borrower. The liquidation, termination or dissolution of Borrower;

(j) Transfer or Encumbrance of Interest in Borrower. Except for any Permitted Transfer, (i) the sale, exchange, conveyance, transfer, mortgage, assignment, pledge or encumbrance, either voluntarily or involuntarily, or the agreement to do so, of any direct or indirect ownership interest in Borrower other than pursuant to the Loan Documents; or (ii) any change (whether voluntary or involuntary) in the management or control of Borrower, except for Borrower Profit Participant or any of its Affiliates or nominees;

(k) Levy; Attachment; Seizure. The levy, attachment or seizure pursuant to court order of (i) any right, title or interest of Borrower in and to the Borrower Collateral or any portion thereof or (ii) any Borrower Member Collateral, if such order is not vacated and the proceeding in which it was entered is not dismissed within 30 days of the entry of such order;

(l) Failure of Representations. Any representation or warranty contained herein or in any of the other Loan Documents or Project Document to which it is a party, or in any certificate or other document executed by Borrower or any Guarantor and delivered to Administrative Agent pursuant to or in connection with this Agreement, is not true and correct in all material respects, or omits to state a material fact necessary to make such representation not misleading, in each case, as of the date made or deemed made;
(m) **Cessation of Construction**. Cessation of the work of construction prior to the Completion of the Facility for a continuous period of 20 days or more (except to the extent due to Force Majeure Causes); or the obtaining by any Person of any order or decree in any court of competent jurisdiction enjoining the construction of any part of the Facility which order or decree is not vacated within 30 days after the granting of such order or decree;

(n) **Permits; Utilities; Insurance**. (i) The neglect, failure or refusal of Borrower to keep in full force and effect any material permit, license, consent or approval required for the construction or operation of any part of the Facility that is not fully reinstated within 30 days after Administrative Agent gives Borrower notice of the lapse of effectiveness of such material permit, license, consent or approval; or (ii) the curtailment in availability to the Mortgaged Property of utilities or other public services necessary for the full occupancy and utilization of the Improvements that is not restored to full availability within 30 days after Administrative Agent gives Borrower notice of such curtailment of availability; or (iii) the failure by Borrower to maintain any insurance required under Section 7.01 hereof;

(o) **Change in Contractor**. The occurrence of any change in Contractor without Administrative Agent’s prior written consent;

(p) **Cessation of Loan Documents to be Effective**. The cessation, for any reason, of any Loan Document to be in full force and effect; the failure of any Lien intended to be created by the Loan Documents to exist or to be valid and perfected; the cessation of any such Lien, for any reason, to have the priority contemplated by this Agreement or the other Loan Documents, subject to Borrower’s right to contest liens in accordance with the terms of this Agreement; or the revocation by any Guarantor of any Loan Document executed by such Guarantor;

(q) **Judgments**. Any judgment or order for the payment of money, not covered by insurance, in excess of $250,000 is rendered against Borrower and either (a) enforcement proceedings have been commenced by a creditor upon such judgment, or (b) there is a period of 15 days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, is not in effect;

(r) **Principals**.

(i) The Principals, jointly, are not in compliance with Section 5.5 of the Primary Completion Guaranty;

(ii) the failure of the following to be true any time: at least one Principal is alive who is in compliance with Section 5.5 of the Primary Completion Guaranty and no event described in Section 8.01(e), (f), (g), (h) or (i) shall have occurred and be continuing with respect to such Principal; or

(iii) both Principals have died and within 60 days of the latest death (x)(I) the obligations of such Principals as a Guarantor shall not have been assumed by the duly appointed personal representative of the respective estates of such Principals or by a replacement guarantor or guarantors, as applicable, reasonably satisfactory to the Administrative Agent and no event described in Section 8.01(e), (f), (g), (h) or (i) shall
have occurred and be continuing with respect to such assuming guarantors or (II) in lieu of such assumption, the duly appointed personal representative of the respective estates of such Principals shall not have deposited with the Collateral Agent the sum of $10,000,000 as collateral security for the obligations of the Borrower that are guaranteed by the Principals under their Guaranties and (y) the Borrower shall not have made arrangements reasonably satisfactory to the Administrative Agent that make available to the Borrower or the Developer individuals with development expertise adequate to perform the obligations of Developer under the Development Agreement.

(s) Regulatory Event.

(iv) A state or federal regulator, agency or other Governmental Authority shall revoke any license, permit, certificate or qualification pertaining to the Facility or necessary for the continued operation of the Facility (including, without limitation, the Proton System), regardless of whether such license, permit, certificate or qualification was held by or originally issued for the benefit of Borrower, Facility Lessee, the Proton System, Proton System Supplier, Operator or any other Person, and a replacement license, permit, certificate or qualification providing the same rights, privileges and benefits as the one so revoked is not issued within 30 days following such revocation; or

(v) If at any time there shall occur with respect to the Facility the imposition by any Governmental Authority of sanctions in the form of either a program termination (that is not lifted within 30 days after issuance), temporary management of the Facility by any Governmental Authority, or closure, or if for any reason the Borrower, Facility Lessee, the Proton System, Proton System Supplier or Operator, is terminated or suspended from participation in Medicare, Medicaid or any other federal or state health care or reimbursement program.

(t) Borrower Cross-Default. Failure by Borrower to pay when due any Indebtedness in an outstanding principal amount of $250,000 excluding the Loans; or the default by Borrower in the performance (beyond the applicable grace period with respect thereto, if any) of any term, provision or condition contained in any loan agreement or other debt instrument, or any other event shall occur or condition exist, the effect of which default, event or condition is to cause, or permit the holder(s) of such Indebtedness to cause, such Indebtedness to become due prior to its stated maturity or any commitment to lend under any such loan agreement or other debt instrument to be terminated prior to its stated expiration date; or any Indebtedness shall be declared to be due and payable or required to be prepaid or repurchased (other than by a regularly scheduled payment) prior to the stated maturity thereof; or

(u) Construction Events.

(i) Substantial Completion of the Improvements has not occurred on or prior to the Outside Improvements Substantial Completion Date;

(ii) Substantial Completion of the Facility has not occurred on or prior to the Outside Facility Substantial Completion Date;
(iii) Completion of the Facility has not occurred on or prior to the Outside Facility Substantial Completion Date;

(iv) any voucher or invoice is fraudulently submitted by Borrower or any of its Affiliates in connection with any
Advance for services performed or for materials used in or furnished for the Facility;

(v) if Administrative Agent, the Independent Engineer or any of their representatives are not permitted access to
the Facility in accordance with Section 4.04 of this Agreement; and

(vi) if Borrower shall fail to deliver to Administrative Agent or its representative, when requested upon not less
than 5 Business Days’ notice, copies of the Plans and Specifications.

(v) Failure to Perform Covenants. The failure of Borrower or any Loan Party to fully perform any and all covenants and
agreements hereunder or under any of the other Loan Documents (other than those specifically referenced in this Section 8.01) and
such failure is not cured by Borrower within 30 days after Administrative Agent gives notice to Borrower thereof.

ARTICLE IX
ACCELERATION AND REMEDIES

9.01 Acceleration. If any Default described in Section 8.01(d), (e), (f) or (g) hereof occurs with respect to Borrower, the
obligations of the Lenders to make Loans hereunder shall automatically terminate and the Obligations shall immediately become due
and payable without any election or action on the part of Administrative Agent or any Lender. If any other Default occurs,
Administrative Agent, acting at the direction of the Required Lenders, may terminate or suspend the obligations of the Lenders to
make Loans hereunder, or declare the Obligations to be due and payable, or both, whereupon the Obligations shall become
immediately due and payable, without presentment, demand, protest or notice of any kind, all of which Borrower hereby expressly
waives. If the Required Lenders (in their sole discretion) shall so direct, Administrative Agent shall, by notice to Borrower, rescind
and annul such acceleration and/or termination.

9.02 Remedies under Loan Documents.

(a) Generally. Upon the occurrence and during the continuance of a Default hereunder, Administrative Agent, on
behalf of the Lenders, shall have the right, in person or by agent, to exercise all rights and remedies available to Administrative
Agent under this Agreement and the other Loan Documents and in respect of the Loan Collateral, including, without limitation:

(i) All rights to direct the Collateral Agent to exercise sole and exclusive control over the Collateral Accounts and
to disburse funds from the Collateral Accounts in payment of the obligations secured thereby;

(ii) All rights under the Borrower Member Pledge Agreement in the Borrower Member Collateral;
(iii) All rights as a secured party hereunder under the Borrower Collateral; and

(iv) If a Default has occurred and is continuing under the Facility Lease, all rights of Borrower in the Facility Lessee Collateral.

(b) Right to Complete Construction. Upon the occurrence and during the continuance of a Default hereunder, Administrative Agent, on behalf of the Lenders, shall have the right, in person or by agent, in addition to all other rights and remedies available to Administrative Agent under this Agreement, the other Loan Documents, to the fullest extent permitted by law, to take possession of the Mortgaged Property and perform any and all work and labor necessary to complete the Improvements and the acquisition and installation of the Proton System substantially in accordance with the Plans and Specifications and the Building Interface Document (with such modifications as shall be deemed appropriate by Administrative Agent), and employ watchmen to protect the Mortgaged Property from injury. All reasonable sums so expended by Administrative Agent or any Lender shall be deemed to have been paid to Borrower and constitute Obligations. Effective upon the occurrence and during the continuance of a Default, Borrower hereby constitutes and appoints Administrative Agent its true and lawful attorney-in-fact, with full power of substitution, to so complete the Improvements in the name of Borrower. Borrower hereby empowers said attorney to: (a) use any funds of Borrower, including any funds which may remain undisbursed hereunder for the purpose of so completing the Facility; (b) make such additions, changes and corrections in the Plans and Specifications or the Building Interface Document as Administrative Agent deems appropriate; (c) employ such contractors, agents, architects and inspectors as shall be required for said purposes; (d) pay, settle or compromise all existing bills and claims which may be liens against the Mortgaged Property, or as may be necessary or desirable for such Completion of the Facility or for clearance of title; (e) execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (f) prosecute and defend all actions or proceedings in connection with the Mortgaged Property or the construction of the Improvements and take such action and require such performance as it deems necessary under any bond or guaranty of completion; and (g) do any and every act which Administrative Agent shall determine in its sole discretion. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked.

(c) Any such actions taken by Administrative Agent shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Administrative Agent may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Administrative Agent permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing and subject to applicable law, Borrower agrees that if a Default is continuing (i) Administrative Agent is not subject to any “one action” or “election of remedies” law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Administrative Agent shall remain in full force and effect until Administrative Agent has exhausted all of its remedies against the Borrower Collateral and the Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of all of the Obligations under the Loan Documents.

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(d) Except as otherwise expressly set forth herein or in any other Loan Document, Borrower hereby waives to the extent not prohibited by applicable law (a) all presentments, demands for payment or performance, notices of nonperformance (except to the extent required by the provisions hereof or of any other Loan Documents), protests and notices of dishonor, (b) any requirement of diligence or promptness on Administrative Agent’s or the Lenders’ part in the enforcement of its rights (but not fulfillment of its obligations) under the provisions of this Agreement or any other Loan Document, and (c) any and all notices of every kind and description which may be required to be given by any statute or rule of law and are not otherwise required to be given hereunder or under any other Loan Document, to the fullest extent permitted by applicable law.

(e) No course of dealing and no delay or omission by Administrative Agent, the Lenders or Borrower in exercising any right or remedy hereunder or under any other Loan Document shall operate as a waiver thereof or of any other right or remedy and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. No waiver or consent shall be binding upon Administrative Agent or the Lenders unless it is in writing and signed by Administrative Agent. Administrative Agent’s exercise of Administrative Agent’s right to remedy any default by Borrower to Administrative Agent or any other Person shall not constitute a waiver of the default remedied, a waiver of any other prior or subsequent default by Borrower or a waiver of the right to be reimbursed for any and all of its expenses in so remedying such default. The making of an Advance hereunder during the existence of a Default shall not constitute a waiver thereof. No Advance of Loan proceeds hereunder, no increase or decrease in the amount of any Advance, and no making of all or any part of an Advance prior to the due date thereof shall constitute an approval or acceptance by Administrative Agent or the Lenders of the work theretofore done or a waiver of any of the conditions of the Lenders’ obligation to make further Advances, nor in the event Borrower is unable to satisfy any such condition, shall any such failure to insist upon strict compliance have the effect of precluding the Lenders from thereafter refusing to make an Advance and/or declaring such inability to be a Default as hereinabove provided. All Advances shall be deemed to have been made pursuant hereto and not in contravention of the terms of this Agreement.

(f) The rights, powers and remedies of Administrative Agent and the Lenders under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Administrative Agent or any Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Administrative Agent’s and the Lenders’ rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as the Lenders may determine in the Lenders’ sole discretion. No delay or omission to exercise any remedy, right or power accruing upon the occurrence and continuation of a Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default by Borrower or to impair any remedy, right or power consequent thereon.
9.03 **Curing of Defaults.** Upon the occurrence of a Default hereunder, Administrative Agent or any Lender, without waiving any right of acceleration or foreclosure under the Loan Documents which Administrative Agent or the Lenders may have by reason of such Default or any other right Administrative Agent or the Lenders may have against Borrower because of said Default, shall have the right (but not the obligation) to take such actions and make such payments as shall be necessary to cure such Default, including, without limitation, the making of Advances. All amounts so expended shall constitute Obligations and shall be payable by Borrower on demand by Administrative Agent.

**ARTICLE X**

**ADMINISTRATIVE AND COLLATERAL AGENTS**

10.01 **Appointment.**

(a) Each of the Lenders hereby irrevocably appoints Administrative Agent as its agent and authorizes Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof, together with such actions and powers as are reasonably incidental thereto and to execute, deliver, administer and perform the Agreement and each other Loan Document to which it is a party (including in which it is expressed to be a party for the benefit of the Secured Parties). Administrative Agent shall administer this Agreement and the other Loan Documents to which it is a party and service the Loans in accordance with the terms and conditions of this Agreement.

(b) Each of the Secured Parties hereby irrevocably appoints Collateral Agent as its agent and authorizes Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to Collateral Agent by the terms hereof and the other Loan Documents to which it is a party, together with such actions and powers as are reasonably incidental thereto and to execute, deliver and perform each Loan Document to which it is a party (including in which it is expressed to be a party for the benefit of the Secured Parties).

(c) As to any matters not expressly provided for in this Agreement, or in any other Loan Document to which it is a party, Administrative Agent shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders, and Collateral Agent shall act upon the instructions of Administrative Agent, and, in each case, such instructions shall be binding upon all Lenders.

(d) Administrative Agent agrees to deliver promptly to each Lender a copy of each material notice, report, financial statement or other material documents given to it by Borrower pursuant to the terms of the Loan Documents. In addition, Administrative Agent shall provide to each Lender copies of any material reports of any consultants retained by Administrative Agent, including without limitation, the Independent Engineer, and Administrative Agent shall schedule inspections of the Property for any Lender upon the reasonable request of such Lender.

(e) Except as otherwise expressly provided in this Agreement, or in any other Loan Document to which it is a party, Administrative Agent and Collateral Agent shall take all such actions hereunder and under the other Loan Documents to which it is a party which are not
inconsistent with the terms hereof or thereof as the Required Lenders shall instruct Administrative Agent, and Administrative Agent shall instruct Collateral Agent (and Administrative Agent and Collateral Agent shall be fully protected in so acting or refraining from acting upon such instructions) and such instructions shall be binding upon all of the Lenders; provided, however, that the Required Lenders shall not have the right to require any Lender to exceed its Commitment.

(f) Promptly after Administrative Agent acquires actual knowledge thereof, Administrative Agent will give written notice to each Lender of any Lien on the Property or Default or Unmatured Default under this Agreement or any of the other Loan Documents, including, without, limitation, notice if any payment of principal or interest on the Loans is not made when due. Administrative Agent agrees to consult with the Lenders in respect of any material remedial action to be taken in respect of any such Default or Unmatured Default (which consultation shall include Administrative Agent’s request for the additional fees it will require from the Lenders in connection with dealing with such Default or Unmatured Default and proposed workout of the Loans) and shall act in accordance in all material respects with any decision of the Required Lenders (and shall be fully protected in so acting). Administrative Agent agrees that during any period of any Default, Administrative Agent will not take any remedial action without the prior agreement and consent of the Required Lenders.

(g) Administrative Agent shall promptly distribute to each Lender that is not a Defaulting Lender its Applicable Percentage of any payment on account of principal or interest received by Administrative Agent by credit to an account of such Lender, or to such other Person or in such other manner as such Lender may designate, provided any other designated account is maintained at a commercial bank located in the United States of America. If any payments are received by Administrative Agent after 3:00 p.m. (New York time), then provided Administrative Agent shall not be able to distribute to each Lender its Applicable Percentage of any such payment on the same day as such payment is received by Administrative Agent, Administrative Agent shall hold such payment to the extent not so distributed for the benefit of the respective Lenders ratably, shall invest any such Lender’s Applicable Percentage of such payment not so distributed in overnight federal funds for the benefit of such Lender and such Lender shall be entitled to receive its Applicable Percentage of such payment together with interest earned thereon on the following Business Day.

10.02 Capacity as Lender. The bank serving as Administrative Agent and/or Collateral Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with Borrower or any Subsidiary or other Affiliate thereof as if it were not Administrative Agent hereunder.

10.03 Duties and Obligations. Administrative Agent and Collateral Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents to which it is a party. Without limiting the generality of the foregoing, (a) Administrative Agent and Collateral Agent shall not be subject to any fiduciary or other implied duties to Borrower, any Lender or any other Person, regardless of whether a Default or Unmatured Default has occurred and is continuing, (b) Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated
hereby that Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in this Agreement), (c) Collateral Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except as directed by Administrative Agent, and (d) except as expressly set forth in the Loan Documents, neither Administrative Agent nor Collateral Agent shall have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its subsidiaries or Affiliates that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in this Agreement) and Collateral Agent shall have no such liability for any action taken or not taken by it with the consent or at the request of Administrative Agent or in the absence of its own gross negligence or willful misconduct. Administrative Agent shall be deemed not to have knowledge of any Default or Unmatured Default unless and until written notice thereof is given to Administrative Agent by Borrower or a Lender, and Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or under any other Loan Document or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or any Project Document, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document, or any Project Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in this Agreement, other than to confirm receipt of items expressly required to be delivered to Administrative Agent, (vi) the value, sufficiency, creation, perfection or priority of any lien on the Loan Collateral, or (vii) the financial condition of Borrower, any Guarantor, Contractor or Proton System Supplier.

10.04 Reliance. Administrative Agent, Collateral Agent and each Lender shall be entitled to rely upon, and shall have no liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including electronic communications) believed by it to be genuine and to have been signed or sent by the proper Person. Each of Administrative Agent, Collateral Agent and each Lender also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. Each of Administrative Agent, Collateral Agent and each Lender may consult with legal counsel, independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. Neither Administrative Agent, Collateral Agent, nor its directors, officers or employees nor any authorized representatives, agents, attorneys, or other persons permitted or authorized to act in accordance with or pursuant to the Loan Documents, shall be liable for any error of judgment or for any act done or omitted to be done by it in good faith or for any mistake of fact or law, or for any act which it may do or refrain from doing in good faith, except as a result of its own gross negligence, fraud or willful misconduct as determined by a court of competent jurisdiction in a final non-appealable judgment.
Sub-Agents. Administrative Agent and Collateral Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by Administrative Agent and/or Collateral Agent, as the case may be. Administrative Agent, Collateral Agent and any such sub-agent thereof may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of Administrative Agent, Collateral Agent and any such sub-agent thereof, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Resignation and Removal.

(a) Subject to the appointment and acceptance of a successor as provided in this paragraph, Administrative Agent and/or Collateral Agent may resign at any time upon no less than 90 days prior written notice to the Secured Parties and Borrower. Upon any such resignation, the Required Lenders (other than Subordinated Lender) shall have the right to appoint a successor. If no successor is appointed by such Required Lenders within 30 days after the retiring Administrative Agent and/or Collateral Agent gives notice of its resignation, the Required Senior First Lien Lenders shall have the right to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 60 days after the retiring Administrative Agent and/or Collateral Agent gives notice of its resignation, then the retiring Administrative Agent and/or Collateral Agent may, on behalf of the Lenders, appoint a successor Administrative Agent which shall be a national or state chartered bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and/or Collateral Agent, and the retiring Administrative Agent and/or Collateral Agent shall be discharged from its duties and obligations hereunder as of the date of such successor’s acceptance of its appointment and assumption of its obligations as such, in writing, as Administrative Agent, or Collateral Agent, as the case may be. The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After Administrative Agent’s and/or Collateral Agent’s resignation hereunder, the provisions of this Article X and Section 11.03 hereof shall continue in effect for the benefit of such retiring Administrative Agent and/or Collateral Agent, as the case may be, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent and/or Collateral Agent.

(b) The Required Lenders shall have the right to remove Administrative Agent, or to direct Administrative Agent to remove Collateral Agent, by written notice to Borrower and Administrative Agent to be effective as to Borrower as and when such notice is actually received by Borrower. If the Required Lenders shall remove Administrative Agent or direct the removal of Collateral Agent, then the Required Lenders shall designate another Lender to perform the obligations and exercise the rights of Administrative Agent or Collateral Agent, as the case may be, hereunder. The successor Administrative Agent or Collateral Agent shall assume such obligations in writing and from and after Borrower’s receipt of a copy of notice of such replacement and receipt of a copy of such assumption the successor Administrative Agent or Collateral Agent shall be the sole Administrative Agent or Collateral Agent, as the case may be, hereunder and the term “Administrative Agent” or “Collateral Agent” shall thereafter refer to such successor. Borrower
shall have no approval right with respect to any replacement Administrative Agent or Collateral Agent.

(c) Notwithstanding anything to the contrary contained herein, in no event may any Subordinated Lender or any of its Affiliates or Borrower or any of its Affiliates (other than Senior Second Lien Lender or any of its Affiliates) be Administrative Agent.

10.07 Independent Credit Analysis. Each Lender acknowledges and agrees that the extensions of credit made hereunder are commercial loans and not investments in a business enterprise or securities. Each Lender further represents that it is engaged in making, acquiring or holding commercial loans in the ordinary course of its business and has, independently and without reliance upon Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder. Each Lender shall, independently and without reliance upon Administrative Agent or any other Lender and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning Borrower and its Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any related agreement or any document furnished hereunder or thereunder and in deciding whether or to the extent to which it will continue as a lender or assign or otherwise transfer its rights, interests and obligations hereunder.

10.08 Lender Actions Against Collateral. Each Lender agrees that it will not take any action, nor institute any actions or proceedings, with respect to the Obligations, against Borrower, any Guarantor, or any other obligor under this Agreement, the other Loan Documents, the Project Documents or against any of the Loan Collateral (including, without limitation, set-off rights) without the consent of the Required Lenders. With respect to any action by Administrative Agent and/or Collateral Agent to enforce the rights and remedies of Administrative Agent and the Lenders under this Agreement and the other Loan Documents, each Lender hereby consents to the jurisdiction of the court in which such action is maintained, and agrees to deliver its Note to Administrative Agent to the extent necessary to enforce the rights and remedies of Administrative Agent for the benefit of the Secured Parties under the Mortgage in accordance with the provisions hereof. Each Lender agrees to indemnify each of the other Lenders for any loss or damage suffered or cost incurred by such other Lender (including without limitation, attorneys’ fees and expenses and other costs of defense) as a result of the breach of this Section 10.08 by such Lender.

10.09 Lender Reply Period. All communications from Administrative Agent to Lenders requesting Lenders’ determination, consent or approval (i) shall be given in the form of a written notice to each Lender, (ii) shall be accompanied by a description of the matter as to which such determination, consent or approval is requested, (iii) shall include a legend substantially as follows, printed in capital letters or boldface type:

“THIS COMMUNICATION REQUIRES IMMEDIATE RESPONSE. ADD TO SECOND NOTICE : FAILURE TO RESPOND WITHIN TEN (10) BUSINESS DAYS AFTER THE DELIVERY OF THIS COMMUNICATION SHALL BE DEEMED
and (iv) shall include Administrative Agent’s recommended course of action or determination in respect thereof, each Lender shall (each, an “Administrative Agent Consent Request Notice”). If a Lender shall fail to timely respond in writing to Administrative Agent, Administrative Agent shall send a second Administrative Agent Consent Request Notice to Lender. Each Lender shall endeavor to reply promptly to any such request, but in any event within 10 Business Days after the delivery of such request by the second Administrative Agent Consent Request Notice (the “Lender Reply Period”). Unless a Lender shall give written notice to Administrative Agent that it objects to the recommendation (together with a written explanation of the reasons behind such objection) prior to the expiration of the Lender Reply Period, such Lender shall be deemed to have approved of or consented to such recommendation or determination. With respect to decisions requiring the approval of the Required Lenders or all Lenders, Administrative Agent shall timely submit any required written notices to all Lenders and upon receiving the required approval or consent shall follow the course of action or determination recommended by Administrative Agent or such other course of action recommended by the Required Lenders or all of the Lenders, as the case may be and each non-responding Lender shall be deemed to have concurred with such recommended course of action.

10.10 Defaulting Lender. Notwithstanding any provision of this Agreement to the contrary, if a Lender becomes a Defaulting Lender, the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) Suspension of Voting Rights. Such Defaulting Lender shall not have the right to vote on any issue on which voting is required (other than to the extent expressly provided in Section 11.02(b)) and the Commitment of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder.

(b) Turn Over of Payments. All amounts payable hereunder to the Defaulting Lender in respect of the Obligations (whether on account of principal, interest, fees or otherwise, including, without limitation, interest payments from interest reserve allocations to the Defaulting Lender and any amounts that would otherwise be payable to the Defaulting Lender pursuant to Section 3.10, but excluding Section 3.11(b)) hereof, shall be paid to Administrative Agent, retained in a segregated account and, subject to any applicable requirements of law, be applied at such time or times as may be determined by Administrative Agent as follows: (i) first, to the payment of any reasonable amounts actually due and owing by the Defaulting Lender to Administrative Agent hereunder as determined by Administrative Agent in good faith, (ii) second, to the funding of any Advance in respect of which the Defaulting Lender has failed to fund its portion as required by this Agreement, as determined by Administrative Agent, in good faith (iii) third, to the payment of any reasonable amounts actually due and owing by the Defaulting Lender to the Non-Defaulting Lenders hereunder, including without limitation for any Special Advance under paragraph (c) of this Section 10.11, as determined by Administrative Agent in good faith and (iv) fourth, to the Defaulting Lender.
(c) **Special Advances.** If a Lender fails to fund its portion of any Advance, in whole or part (such amount, a “Deficiency”), within 10 Business Days after the date required hereunder and Administrative Agent shall not have funded such Deficiency under Section 3.03(b) hereof, Administrative Agent shall so notify the Lenders in writing, and within 3 Business Days after delivery of such notice, the Non-Defaulting Lenders shall have the right, but not the obligation, in their respective, sole and absolute discretion, to fund all or a portion of such Deficiency (the amount so funded by any such Non-Defaulting Lenders being referred to herein as a “Special Advance”) to Borrower. In such event, the Defaulting Lender and Borrower agree to pay to Administrative Agent for payment to the Lenders making the Special Advance, forthwith on demand such amount with interest thereon, for each day from and including the date such amount is made available to Borrower to but excluding the date of payment to Administrative Agent, at the interest rate that would have been applicable to such Deficiency if funded by the Defaulting Lender.

(d) **Option to Purchase Future Commitment.** The Non-Defaulting Lenders shall have the right, but not the obligation, in their respective, sole and absolute discretion, to acquire for no cash consideration (pro rata, based on the respective Commitments of those Lenders electing to exercise such right), a Defaulting Lender’s Commitment to fund future Loans (the “Future Commitment”). Upon any such purchase of the Defaulting Lender’s Future Commitment, the Defaulting Lender’s share in future Advances and its rights under the Loan Documents with respect thereto shall terminate on the date of purchase, and the Defaulting Lender shall promptly execute all documents reasonably requested to surrender and transfer such interest.

(e) **Replacement of Defaulting Lender.**

(i) **By Required Lenders.** The Required Lenders may, upon notice to the Defaulting Lender and Administrative Agent, require the Defaulting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 11.04 hereof) all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Defaulting Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrower (in the case of all other amounts); and (ii) Administrative Agent shall have received payment of any amounts owing by such Lender to Administrative Agent or the other Lenders under this Agreement. The Defaulting Lender shall not be required to make any such assignment and delegation if, prior thereto, such Lender shall cease to be a Defaulting Lender.

(ii) **By Borrower.** If the Lender has become a Defaulting Lender due to a failure to fund its Loans hereunder, Borrower may at its option replace Defaulting Lender under Section 3.11(b) hereof.

(f) **Indemnification.** Each Defaulting Lender shall indemnify, defend and hold harmless Administrative Agent, each Non-Defaulting Lender and Borrower from and against any out-of-pocket liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatever which may be imposed on, incurred by or asserted against Administrative Agent, any Non-Defaulting Lender or Borrower with respect to the Loan.
Documents arising out of such Lender’s status as a Defaulting Lender (including in enforcing the foregoing indemnification. The obligations of the Defaulting Lender under this clause (f) shall survive the payment of the Obligations, the termination of this Agreement and the Defaulting Lender’s reversion to a Non-Defaulting Lender under paragraph (g) of this Section 10.11.

(g) **Ceasing to be a Defaulting Lender**. A Lender shall cease to be Defaulting Lender only upon (i) the payment of all amounts due and payable by Defaulting Lender to Administrative Agent or any other Lender under this Agreement; (ii) the payment of any out-of-pocket damages suffered by Borrower or any other Lender as a result of such Defaulting Lender’s default hereunder; and (iii) the circumstances described in clause (d) of the definition of “Defaulting Lender” do not exist. An assignment by a Lender of its rights and obligations under this Agreement shall not in and of itself cause the Lender to cease to be a Defaulting Lender.

10.11 **Borrower’s Rights**. The provisions of this Article X are solely for the benefit of Administrative Agent and the Lenders, and Borrower shall not have any rights to rely on, enforce or consent to any waiver, modification or amendment of, any of the provisions hereof; provided, however, that Borrower (a) acknowledges and agrees to the limitations set forth in Section 11.02(c) hereof on Administrative Agent’s ability to act unilaterally with respect to this Agreement, the other Loan Documents or the Project Documents, and (b) agrees that Administrative Agent’s inability to deliver any consent to, or approval of, an action requested by Borrower due to lack of appropriate Required Lender consent in accordance with the provisions of Section 11.02(c) hereof or the Agreement Among Lenders shall not constitute an unreasonable withholding or delay by Administrative Agent in the giving of such consent or approval. Notwithstanding the foregoing, Borrower shall be entitled to rely on consents and approvals executed by Administrative Agent without investigation as to the existence of proper Lender authorization. As among Administrative Agent and the Lenders, the provisions of this Article 10 may be amended, waived or otherwise modified by Administrative Agent and the Lenders without Borrower’s consent and without the need for Borrower to be party to any of the same.

10.12 **Non-liability of Administrative Agent and the Lenders**. Borrower acknowledges and agrees that:

(a) any inspections of the construction of the Improvements made by or through Administrative Agent or the Lenders are for purposes of administration of the Loan only and Borrower is not entitled to rely upon the same with respect to the quality, adequacy or suitability of materials or workmanship, conformity to the Plans and Specifications, state of completion or otherwise; Borrower shall make its own inspections of such construction to determine that the quality of the Improvements and all other requirements of such construction are being performed in a manner satisfactory to Borrower and in conformity with the Plans and Specifications and all other requirements; and Borrower shall immediately notify Administrative Agent, in writing, should the same not be in conformity with the Plans and Specifications and all other requirements;
(b) by accepting or approving anything required to be observed, performed, fulfilled or given to Administrative Agent or the Lenders pursuant to the Loan Documents, including any certificate, statement of profit and loss or other financial statement, survey, appraisal, lease or insurance policy, neither Administrative Agent nor the Lenders shall be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof and such acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by Administrative Agent or the Lenders;

(c) neither Administrative Agent nor the Lenders undertake nor assume any responsibility or duty to Borrower to select, review, inspect, supervise, pass judgment upon or inform Borrower of any matter in connection with the Property, including, without limitation, matters relating to the quality, adequacy or suitability of: (i) the Plans and Specifications, (ii) architects, contractors, subcontractors and materialmen employed or utilized in connection with the construction of the Improvements, or the workmanship of or the materials used by any of them, or (iii) the progress or course of construction and its conformity or nonconformity with the Plans and Specifications; and Borrower shall rely entirely upon its own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or supply of information to Borrower by Administrative Agent or the Lenders in connection with such matters is for the protection of Administrative Agent and/or the Lenders only and neither Borrower nor any third party is entitled to rely thereon;

(d) neither Administrative Agent nor the Lenders owe any duty of care to protect Borrower against negligent, faulty, inadequate or defective building structures, procedures or materials or construction;

(e) neither Administrative Agent nor any Lender shall be liable for any act or omission of any Defaulting Lender; and

(f) neither Administrative Agent nor any Lender shall be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any person or property arising from any construction on, or occupancy or use of, any of the Property, including without limitation any loss, claim, cause of action, liability, indebtedness, damage or injury caused by, or arising from: (i) any defect in any building, structure, grading, fill, landscaping or other improvements. thereon or in any on-site or off-site improvement or other facility therein or thereon; (ii) any act or omission of Borrower, the parties comprising Borrower or any of Borrower’s agents, employees, independent contractors, licensees or invitees; (iii) any accident in or on the Property and Improvements or any fire, flood or other casualty or hazard thereon; (iv) the failure of Borrower or any of Borrower’s licensees, employees, invitees, Administrative Agent, independent contractors or other representatives to maintain the Property in a safe condition; and (v) any nuisance made or suffered on any part of the Property.

ARTICLE XI
MISCELLANEOUS

11.01 Notices
(a) Generally. Except in the case of notices and other communications expressly permitted to be given by electronic communication (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

if to Borrower, to it at

[****] *

with a copy to:

[****]

if to Administrative Agent, to it at

[****]

and

if to any other Lender, to it at its address (or telecopy number or email address) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through Electronic Systems, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by using Electronic Systems pursuant to procedures approved by Administrative Agent; provided that the foregoing shall not apply to notices and advances unless otherwise agreed by Administrative Agent and the applicable Lender. The Administrative Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) **Changes in Address**. Any party hereto may change its address or telecopy number or email address for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

(d) **Electronic Systems**. Borrower agrees that Administrative Agent may, but shall not be obligated to, make Communications (as defined below) available to the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak, ClearPar or a substantially similar Electronic System.

Any Electronic System used by Administrative Agent is provided “as is” and “as available.” The Administrative Agent does not warrant the adequacy of such Electronic Systems and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by Administrative Agent in connection with the Communications or any Electronic System. In no event shall Administrative Agent have any liability to Borrower, any Lender, or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of Borrower’s or Administrative Agent’s transmission of communications through an Electronic System. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of Borrower pursuant to any Loan Document or the transactions contemplated therein which is distributed by Administrative Agent or any Lender by means of electronic communications pursuant to this Section, including through an Electronic System.

11.02 **Waivers; Amendments**.

(a) **No Deemed Waivers; Remedies Cumulative**. No failure or delay by Administrative Agent or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of Administrative Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be permitted by Section 11.02(b) hereof, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default or Unmatured Default, regardless of whether Administrative Agent or any Lender may have had notice or knowledge of such Default or Unmatured Default at the time.
(b) **Waivers and Amendments.** No provision of this Agreement or the Project Loan Agreement may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by Borrower and the Required Lenders or by Borrower and Administrative Agent with the consent of the Required Lenders; *provided* that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender (including any such Lender that is a Defaulting Lender), (ii) increase or reduce the principal amount of any Loan or reduce the rate of interest thereon, or reduce or waive the Make-Whole Fee any other fees payable hereunder, without the written consent of each Lender affected thereby (including any such Lender that is a Defaulting Lender), (iii) shorten or extend the Maturity Date or any scheduled date of payment of the principal amount of any Loan or any interest thereon, or the Make-Whole Fee or any other fees payable hereunder, or reduce the amount of, waive or excuse any such payment, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) affected thereby, (iv) change Section 3.10(b) hereof or Section 3.10(c) in a manner that would alter the *pro rata* sharing of payments required thereby, without the written consent of each Lender (including any such Lender that is a Defaulting Lender), (v) waive, amend or modify the provisions limiting transfers of direct or indirect interests in Borrower without the written consent of each Lender (including any such Lender that is a Defaulting Lender) affected thereby, (vi) change any of the provisions of this Section or the definition of “Required Lenders,” “Required Senior First Lien Lenders” or “Required Senior Second Lien Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender of the class or classes whose voting rights are directly affected thereby, (vii) release (x) any Guarantor from any of its obligations under the Loan Documents, (y) release any portion of the Loan Collateral from the lien of the Loan Documents other than as contemplated by the terms of the Loan Documents, or (z) terminate, postpone the scheduled date for payment or decrease the amount of any payment due under the Facility Lease, the Sublease or the Administrative Services Agreement or the Project Loan Agreement to which Facility Lessee is a party, in each case without the written consent of each Lender, or (viii) permit an assignment by Borrower of any rights or obligations under the Loan Documents, without the written consent of each Lender in each instance; *provided further* that no such agreement shall amend, modify or otherwise affect the rights or duties of Administrative Agent hereunder without the prior written consent of Administrative Agent.

(c) **Actions by Administrative Agent.** Each Lender agrees that any action taken by Administrative Agent at the direction of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in this Agreement), and any action taken by Administrative Agent not requiring consent by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in this Agreement) shall be authorized by and binding upon all Lenders. Borrower acknowledges that the right of the Administrative Agent to grant consent or waivers hereunder or under any Loan Document is subject to consent and approval rights of the Required Lenders, as provided herein and in the Agreement Among Lenders.

11.03 **Expenses; Indemnity; Damage Waiver.**

(a) **Expenses.** Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by Administrative Agent, Collateral Agent, the Lenders and each of their Affiliates, including appraisal fees, inspection fees, charges, title and escrow charges, the cost of Intralinks or a similar
electronic workspace, and the reasonable fees, charges and disbursements of counsel for Administrative Agent, in connection with
the preparation and administration of this Agreement, the other Loan Documents or any extensions, amendments, modifications or
waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated),
and (ii) all out-of-pocket expenses incurred by Administrative Agent or any Lender, including the fees, charges and disbursements of
any counsel for Administrative Agent or any Lender, in connection with the enforcement or protection of its rights in connection
with this Agreement and the other Loan Documents, including its rights under this Section, or in connection with the Loans made
hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such
Loans, including the cost of the Independent Engineer as provided in Section 3.07(e) hereof.

(b) **Borrower Indemnity.** Borrower shall indemnify and defend Administrative Agent, Collateral Agent and each Lender,
and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each
Indemnitee harmless from, any and all losses, claims, damages, judgments, liabilities and related expenses, including the fees,
charges and disbursements of any counsel for any Indemnitee, including in enforcing the foregoing indemnification (collectively, “Losses”), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or
delivery of this Agreement, the other Loan Documents, or any agreement or instrument contemplated hereby, the performance by the
parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions
contemplated hereby or thereby, (ii) any Loan or the use of the proceeds therefrom, or (iii) any actual or prospective claim, litigation,
investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of
whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent
that such Losses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the
gross negligence or willful misconduct of such Indemnitee. The foregoing indemnity set forth in this Section 11.03(b) shall not apply
(i) with respect to Taxes other than any Taxes that represent losses, claims or damages arising from any non-Tax claim and (ii) to
any Losses which are the subject of the Environmental Indemnity Agreement, it being the intention of the parties hereto that
Borrower’s liability for environmental matters be governed exclusively by the Environmental Indemnity Agreement and not by this
Agreement.

(c) **Reimbursement by Lenders.** To the extent that Borrower fails to pay any amount required to be paid by it to
Administrative Agent under Section 11.03(a) or (b) hereof, each Lender severally agrees to pay to Administrative Agent such
Lender’s Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is
sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related
expense, as the case may be, was incurred by or asserted against Administrative Agent in its capacity as such.

(d) **Damage Waiver.** To the extent permitted by applicable law, no party hereto shall assert, and each such party hereby
waives, any claim against any other party, on any theory of liability, for special, indirect, consequential or punitive damages (as
opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or
instrument contemplated hereby, the Transactions, any Loan or the use of the proceeds thereof;
provided that, nothing in this clause (d) shall relieve Borrower of any obligation it may have to indemnify an Indemnitee against special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

(e) **Payment of Amounts Due.** All amounts due under this Section 11.03 shall be payable promptly, but in no events later than 30 days after written demand therefor.

11.04 **Successors and Assigns.**

(a) **Binding Effect.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 11.04. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in Section 11.04(c) hereof) and, to the extent expressly contemplated hereby, the Related Parties of each of Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders.**

(i) Subject to the conditions set forth in Section 11.04(b)(ii) below, any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of Administrative Agent, provided that no consent of Administrative Agent shall be required for (A) an assignment of any Commitment to an assignee that is a Lender with a Commitment immediately prior to giving effect to such assignment or (B) an Eligible Assignee.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender’s Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to Administrative Agent) shall not be less than $5,000,000 unless Administrative Agent otherwise consents, provided that no such consent of Borrower shall be required if a Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement;
The parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of [****] *.

The assignee, if it shall not be a Lender, shall deliver to Administrative Agent an Administrative Questionnaire in which the assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about Borrower, any Guarantor, and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee’s compliance procedures and applicable laws, including Federal and state securities laws.

Any assignment by a Senior First Lien Lender of an interest in the Senior First Lien Loans to a Second Lien Lender or a Subordinated Lender shall require the consent of the Required Senior First Lien Lenders (excluding the transferring Senior First Lien Lender); and any assignment by Senior Second Lien Lender of an interest in the Senior Second Lien Loans to a Subordinated Lender shall require the consent of the Required Senior Second Lien Lenders (excluding the transferring Senior Second Lien Lender).

If and so long as the Contract of Sale limits the number of assignments by the Lenders, the assignment so permitted shall be allocated among original Lenders as follows: two to JPMorgan Chase Bank, N.A., two to Special Situations Investing Group II, LLC, and one to Varian Medical Systems International AG.

For the purposes of this Section 11.04(b), the term “Ineligible Institution” have the following meanings:

"Eligible Assignee" means any Person other than an Ineligible Institution.

“Ineligible Institution” means (a) a natural person, (b) a Defaulting Lender, (c) Borrower, any Guarantor, or any of its Affiliates (other than Borrower Profit Participant or its Affiliates), (d) any Person who is not an “Institutional Investor” as defined in the EDC Deed.

(iii) Subject to the terms and conditions of this Agreement, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.08, 3.09, 3.10, 4.16(c) and 11.03 hereof).

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 11.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.04(c) hereof.

(iv) Administrative Agent shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive, and Borrower, Administrative Agent, Collateral Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee’s completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 11.04(b) hereof and any written consent to such assignment required by Section 11.04(b) hereof, Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register (and shall promptly upon receipt thereof deliver a copy of same to each Lender (but in no event shall a copy thereof be delivered to Borrower)); provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 3.03(b), 3.10(d) or 11.03(c), Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section.

(vi) Notwithstanding any of the foregoing to the contrary, no Lender may assign its interest under the Loans to any party without the prior written consent of Borrower, which Borrower may withhold in its sole discretion, if a consequence of such assignment is that at the time of such assignment Borrower would be subjected to additional charges under either of Sections 3.08 or 3.09 hereof.

(c) **Participations**

(i) Any Lender may, without the consent of Borrower or Administrative Agent, sell participations to one or more banks or other entities (a “Participant”) in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged (and in no event shall such Lender be released of any of its obligations hereunder as a result of any participation), (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) Borrower, Administrative Agent, Collateral Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument...
pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 11.02(b) hereof that affects such Participant. Notwithstanding any of the foregoing to the contrary, no Lender shall sell participations without the prior written consent of Borrower, which Borrower may withhold in its sole discretion, if a consequence of doing so is that Borrower would be subjected to additional charges under either of Sections 3.08 or 3.09 hereof. Participant (A) agrees to be subject to the provisions of Section 3.11 hereof as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 3.08 or 3.09 hereof, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at Borrower’s request and expense, to use reasonable efforts to cooperate with Borrower to effectuate the provisions of Section 3.11(b) hereof with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Sections 3.10(c) and 10.08 hereof as though it were a Lender; provided that such Participant agrees to be subject to Sections 3.10(c) and 10.08 hereof as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under any Loan Document (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any Commitments, Loans, or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, or other obligation is in registered form under section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(ii) In no event may a Participant be Borrower, any Guarantor or an Affiliate of Borrower or of any Guarantor.

(d) Pledges by Lenders. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.
11.05 Counterparts; Integration; Effectiveness.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents and any separate letter agreements with respect to fees paid to Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it shall have been executed by Administrative Agent and when Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(b) Delivery of an executed counterpart of a signature page of this Agreement by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

11.06 Severability. Any provision of this Agreement or any other Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof or thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

11.07 Right of Set-off. If a Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, and to the extent permitted under Section 10.08 hereof, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of Borrower against any of and all the obligations of Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have. Notwithstanding the foregoing, each Lender agrees to obtain approval of the Required Lenders (other than any Defaulting Lender) before exercising such rights.

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11.08 Governing Law; Jurisdiction; Consent to Service of Process.

(a) Governing Law. This Agreement shall be construed in accordance with and governed by the internal laws (and not the law of conflicts) of the State of New York, but giving effect to federal laws applicable to national banks.

(b) Consent to Jurisdiction. Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any United States Federal or New York State court sitting in the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against Borrower or its properties in the courts of any jurisdiction.

c) Waiver of Objection to Venue. Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in Section 11.09(b) hereof. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 11.01 hereof. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

11.09 Waiver of Jury Trial. Each party hereto hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement or the transactions contemplated hereby (whether based on contract, tort or any other theory). Each party hereto (A) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (B) acknowledges that it and the other parties hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this section.
11.10 **Headings.** Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

11.11 **Confidentiality.** Each of Administrative Agent, Collateral Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates’ directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to the Obligations or the enforcement of rights under the Loan Documents, (f) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or Participant in, any of its rights or obligations under this Agreement, (g) with the consent of Borrower, (h) to holders of equity interests in Borrower, or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to Administrative Agent, Collateral Agent or any Lender on a non-confidential basis from a source other than Borrower. For the purposes of this Section, “Information” means all information received from Borrower relating to Borrower or its business, other than any such information that is available to Administrative Agent, Collateral Agent or any Lender on a non-confidential basis prior to disclosure by Borrower; provided that, in the case of information received from Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

**EACH LENDER ACKNOWLEDGES THAT INFORMATION (AS DEFINED IN THIS SECTION) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING BORROWER, ANY GUARANTOR, AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.**

**ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT BORROWER, ANY GUARANTOR, AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT**
11.12  **Interest Rate Limitation.** Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

11.13  **USA Patriot Act.** Administrative Agent and each Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Administrative Agent or such Lender to identify Borrower in accordance with the Act.

11.14  **Administrative Agent Approvals.** With respect to matter under this Agreement requiring the approval or consent of Administrative Agent or any other exercise of discretion by Administrative Agent, Administrative Agent shall exercise its judgment reasonably and in good faith without unreasonable delay after receipt of the necessary information to make a fully informed decision.

11.15  **Replacement Documentation.** Upon receipt of an affidavit of an officer of Administrative Agent or any of the Lenders as to the loss, theft, destruction or mutilation of a Note or any other security document which is not of public record, and, in the case of any such loss, theft, destruction or mutilation, Borrower will issue, in lieu thereof, a replacement Note or other security document in the same principal amount thereof and otherwise of like tenor. In the event that Borrower issues such replacement Note or other security document, the Lender who is the payee on the lost, destroyed, mutilated or stolen Note or security document shall indemnify and hold harmless Borrower from any liability incurred by Borrower in connection with the lost, stolen, destroyed or mutilated Note or security document.

11.16  **Consents and Approvals under Project Loan Documents.** If the Project Loan Agreement and/or any of the other documents evidencing or securing the loans being made pursuant to the Project Loan Agreement (the “Project Loan Documents”) contain any provision or requirement that the Administrative Agent’s and/or Lenders’ consent or approval or waiver or determination be obtained by Borrower in connection with any matter, to the extent that such consent or approval or waiver or determination is also required by Administrative Agent and/or Lenders under this Agreement and/or any of the other documents evidencing or securing the Loan (the “Building Loan Documents”) in connection with such matter, Administrative Agent’s and/or Lenders’ consent or
approval or waiver or determination to such matter hereunder or under any of the Building Loan Documents shall automatically and without any further action be and be deemed to be granted under the Project Loan Agreement and/or the Project Loan Documents, as the case may be; provided, however, that notwithstanding the foregoing, Administrative Agent and/or Lender’s consent to fund any Advance under this Agreement shall not be deemed to constitute, and shall not constitute, Administrative Agent and/or Lender’s consent to fund any Advance (as such term is defined in the Project Loan Agreement) under the Project Loan Agreement.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, the parties hereto have executed this Loan and Security Agreement (Building Loan) as of the day and year first above written.

**MM PROTON I, LLC**,  
a Delaware limited liability company

By: MM Proton I Investors, LLC,  
a Delaware limited liability company,  
its Managing Member

By: [****] *  
Name: [****]  
Title: [****]

**JPMORGAN CHASE BANK, N.A.**,  
as Administrative Agent, Collateral Agent and as a Senior First Lien Lender

By: [****]  
Name: [****]  
Title: [****]

**VARIAN MEDICAL SYSTEMS INTERNATIONAL AG**,  
as a Senior First Lien Lender

By: [****]  
Name: [****]  
Title: [****]

**SPECIAL SITUATIONS INVESTING GROUP II, LLC**,  
as a Senior Second Lien Lender

By: [****]  
Name: [****]  
Title: [****]

**VARIAN MEDICAL SYSTEMS INTERNATIONAL AG**,  
as a Subordinated Lender

By: [****]  
Name: [****]  
Title: [****]

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

[Signature page to Loan and Security Agreement (Building Loan)]

______________________________
STATE OF NEW YORK )
  ) ss.: 
COUNTY OF NEW YORK )

On the ___ day of _______ in the year 2015, before me, the undersigned, a Notary Public in and for said state, personally
appeared __________________, personally known to me or proved to me on the basis of satisfactory evidence to be the person
whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his
signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

______________________________________________________________
Notary Public

STATE OF NEW YORK )
  ) ss.: 
COUNTY OF NEW YORK )

On the ___ day of _______ in the year 2015, before me, the undersigned, a Notary Public in and for said state, personally
appeared __________________, personally known to me or proved to me on the basis of satisfactory evidence to be the person
whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his
signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

______________________________________________________________
Notary Public

STATE OF NEW YORK )
  ) ss.: 
COUNTY OF NEW YORK )

On the ___ day of _______ in the year 2015, before me, the undersigned, a Notary Public in and for said state, personally
appeared __________________, personally known to me or proved to me on the basis of satisfactory evidence to be the person
whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his
signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

______________________________________________________________
Notary Public

[Signature page to Loan and Security Agreement (Building Loan)]
STATE OF NEW YORK

COUNTY OF NEW YORK

On the ___ day of ______ in the year 2015, before me, the undersigned, a Notary Public in and for said state, personally appeared __________________, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

Notary Public

[Signature page to Loan and Security Agreement (Building Loan)]
<table>
<thead>
<tr>
<th>Name/Address</th>
<th>Commitment</th>
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<td>JPMORGAN CHASE BANK, N.A.</td>
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<tr>
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<td>$45,674,288</td>
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</tr>
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</table>

**SENIOR SECOND LIEN LENDER**

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**SUBORDINATED LENDER**

<table>
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<tr>
<td>VARIAN MEDICAL SYSTEMS INTERNATIONAL AG</td>
<td>$5,250,000</td>
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<td>[****]</td>
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</tr>
</tbody>
</table>

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN THE BOROUGH OF MANHATTAN, CITY, COUNTY AND STATE OF NEW YORK BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT A DISTANCE OF 100.00 FEET EAST FROM THE CORNER FORMED BY THE INTERSECTION OF THE EASTERLY SIDE OF THIRD AVENUE (100’ WIDE) AND THE SOUTHERLY SIDE OF EAST 127 TH STREET (60’ WIDE) SAID POINT BEING THE POINT OR PLACE OF BEGINNING;

1. RUNNING THENCE EASTERLY, ALONG THE SOUTHERLY SIDE OF EAST 127 TH STREET, A DISTANCE OF 255.00 FEET TO A POINT;

2. THENCE SOUTHERLY, AT RIGHT ANGLES TO SAID SOUTHERLY SIDE OF EAST 127 TH STREET, A DISTANCE OF 199.83 FEET TO A POINT ON THE NORTHERLY SIDE OF EAST 126 TH STREET (60’ WIDE);

3. THENCE WESTERLY, ALONG SAID NORTHERLY SIDE OF EAST 126 TH STREET, A DISTANCE OF 225.00 TO A POINT;

4. THENCE NORTHERLY, AT RIGHT ANGLES TO SAID NORTHERLY SIDE OF EAST 126 TH STREET, A DISTANCE OF 199.83 FEET TO THE POINT OR PLACE OF BEGINNING.

ENCOMPASSING AN AREA OF 1.170 ACRES, 50,957 SQUARE FEET.
MM PROTON I, LLC, a Delaware limited liability company ("Borrower"), promises to pay to the order of ______________________ ("Lender") ______________________ DOLLARS ($__________________), or if less, the aggregate unpaid principal amount of all Loans made by Lender to Borrower pursuant to the Agreement (as hereinafter defined), together with interest on the unpaid principal amount hereof in the manner set forth in the Agreement. Borrower shall pay on each Interest Payment Date accrued interest on unpaid principal and on the Maturity Date all unpaid principal and all accrued and unpaid interest thereon.

This Note is one of the Notes issued pursuant to, and is entitled to the benefits of, the Loan and Security Agreement (Building Loan) of even date herewith (which, as it may be amended or modified and in effect from time to time, is herein called the "Agreement"), among Borrower, the lenders referenced therein, including Lender, and JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent. Capitalized terms used herein and not otherwise defined herein are used with the meanings attributed to them in the Agreement. Reference is hereby made to the Agreement for a statement of the terms and conditions governing this Note, including the terms and conditions under which this Note may be prepaid or its maturity date accelerated.

This Note evidences the Senior First Lien Loan under the Agreement, which Loan is senior in right of payment to the Senior Second Lien Loan and the Subordinated Loan, in accordance with the terms and priorities set forth in the Loan Agreement and the Agreement Among Lenders.

This Note is secured by liens granted to the Collateral Agent pursuant to the Loan Documents, and reference is made thereto for a statement of the terms, provisions and the priorities to which it is entitled.

MM PROTON I, LLC,
a Delaware limited liability company

By: MM Proton I Investors, LLC,
a Delaware limited liability company,
its Managing Member

By:
Name: [****] *
Title: [****]

*Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
PROMISSORY NOTE
SENIOR SECOND LIEN LOAN

$ ____________________

[Date]

MM PROTON I, LLC, a Delaware limited liability company ("Borrower"), promises to pay to the order of ____________________________ ("Lender") ___________________________ DOLLARS ($__________________), or if less, the aggregate unpaid principal amount of all Loans made by Lender to Borrower pursuant to the Agreement (as hereinafter defined), together with interest on the unpaid principal amount hereof in the manner set forth in the Agreement. Borrower shall pay on each Interest Payment Date accrued interest on unpaid principal and on the Maturity Date all unpaid principal and all accrued and unpaid interest thereon.

This Note is one of the Notes issued pursuant to, and is entitled to the benefits of, the Loan and Security Agreement (Building Loan) of even date herewith (which, as it may be amended or modified and in effect from time to time, is herein called the “Agreement”), among Borrower, the lenders referenced therein, including Lender, and JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent. Capitalized terms used herein and not otherwise defined herein are used with the meanings attributed to them in the Agreement. Reference is hereby made to the Agreement for a statement of the terms and conditions governing this Note, including the terms and conditions under which this Note may be prepaid or its maturity date accelerated.

This Note evidences the Senior Second Lien Loan under the Agreement, which Loan is subordinate in right of payment to the Senior First Lien Loan and senior in right of payment to the Subordinated Loan, all in accordance with the terms and priorities set forth in the Loan Agreement and the Agreement Among Lenders.

This Note is secured by liens granted to the Collateral Agent pursuant to the Loan Documents, and reference is made thereto for a statement of the terms, provisions and the priorities to which it is entitled.

MM PROTON I, LLC,

a Delaware limited liability company

By: MM Proton I Investors, LLC,

a Delaware limited liability company,

its Managing Member

By: ____________________________

Name: [****] *

Title: [****]

*Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
EXHIBIT C-3
PROMISSORY NOTE
SUBORDINATED LOAN

$ [Date]

MM PROTON I, LLC, a Delaware limited liability company ("Borrower"), promises to pay to the order of ____________________________ ("Lender") ___________________________ DOLLARS ($__________________), or if less, the aggregate unpaid principal amount of all Loans made by Lender to Borrower pursuant to the Agreement (as hereinafter defined), together with interest on the unpaid principal amount hereof in the manner set forth in the Agreement. Borrower shall pay the principal of and accrued and unpaid interest on the Loans in full on the Maturity Date.

This Note is one of the Notes issued pursuant to, and is entitled to the benefits of, the Loan and Security Agreement (Building Loan) of even date herewith (which, as it may be amended or modified and in effect from time to time, is herein called the "Agreement"), among Borrower, the lenders referenced therein, including Lender, and JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent. Capitalized terms used herein and not otherwise defined herein are used with the meanings attributed to them in the Agreement. Reference is hereby made to the Agreement for a statement of the terms and conditions governing this Note, including the terms and conditions under which this Note may be prepaid or its Maturity Date accelerated.

This Note evidences the Subordinated Loan under the Agreement, which Loan is subordinate in right of payment to the Senior First Lien Loan and the Senior Second Lien Loan, all in accordance with the terms and priorities set forth in the Loan Agreement and the Agreement Among Lenders.

This Note is secured by liens granted to the Collateral Agent pursuant to the Loan Documents, reference is made thereto for a statement of the terms, provisions and the priorities to which it is entitled.

**MM PROTON I, LLC**, a Delaware limited liability company
By: MM Proton I Investors, LLC, a Delaware limited liability company, its Managing Member
By:
Name: [****] *
Title: [****]

*Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
EXHIBIT D
ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [Insert name of Assignor] (the “Assignor”) and [Insert name of Assignee] (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement identified below (as amended, the “Loan Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and other rights of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Loan Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor:

2. Assignee:

   [and is an Affiliate/Approved Fund of [identify Lender]]

3. Borrower(s):

4. Administrative Agent:

   , as the administrative agent under the Loan Agreement

5. Credit Agreement:

   [The [amount] Loan and Security Agreement (Building Loan) dated as of ______ among [name of Borrower(s)], the Lenders parties thereto, [name of Administrative Agent], as Administrative Agent, and the other agents parties thereto]

6. Assigned Interest:

Annex 1-1
<table>
<thead>
<tr>
<th>Facility Assigned</th>
<th>Aggregate Amount of Commitment/Loans for all Lenders</th>
<th>Amount of Commitment/Loans Assigned</th>
<th>Percentage Assigned of Commitment/Loans</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
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<td>%</td>
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<td></td>
</tr>
<tr>
<td>$</td>
<td></td>
<td>%</td>
<td></td>
</tr>
</tbody>
</table>

Effective Date: _____________, 20____ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREOF.]

The Assignee agrees to deliver to Administrative Agent a completed Administrative Questionnaire in which the Assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about Borrower, the Guarantor, and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the Assignee’s compliance procedures and applicable laws, including Federal and state securities laws.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: ________________________________
Title: _____________________________

ASSIGNEE

[NAME OF ASSIGNEE]

By: ________________________________
Title: _____________________________

[Consented to and] Accepted:

[NAME OF ADMINISTRATIVE AGENT], as Administrative Agent

By: ________________________________
Title: _____________________________
[Consented to:]

[NAME OF RELEVANT PARTY]  
By________________________________  
Title:   

Annex 1-3
STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of Borrower, any of its subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by Borrower, any of its subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. [The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreement, (ii) it satisfies the requirements, if any, specified in the Loan Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Loan Agreement, together with copies of the most recent financial statements delivered pursuant to Section ___ thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on Administrative Agent or any other Lender, and (v) attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Loan Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on Administrative Agent, the Assignor 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 the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.
3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Acceptance and adoption of the terms of this Assignment and Assumption by the Assignee and Assignor by Electronic Signature or delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.
EXHIBIT E-1

FORM OF

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Loan and Security Agreement (Building Loan) dated as of [ ] (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”), among [ ], and each lender from time to time party thereto.

Pursuant to the provisions of Section 3.12 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of Borrower within the meaning of section 881(c)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to Borrower as described in section 881(c)(3)(C) of the Code.

The undersigned has furnished Administrative Agent and Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform Borrower and Administrative Agent, and (2) the undersigned shall have at all times furnished Borrower and Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: ________________________________

Name: ________________________________

Title: ________________________________

Date: ________ __, 20[ ]
Reference is hereby made to the Loan and Security Agreement (Building Loan) dated as of [ ] (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”), among [ ], and each lender from time to time party thereto.

Pursuant to the provisions of Section 3.12 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of Borrower within the meaning of section 881(c)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to Borrower as described in section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: __________________________

Name: __________________________

Title: __________________________

Date: ____________ __, 20[ ]
Reference is hereby made to the Loan and Security Agreement (Building Loan) dated as of [ ] (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”), among [ ], and each lender from time to time party thereto.

Pursuant to the provisions of Section 3.12 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of Borrower within the meaning of section 881(c)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to Borrower as described in section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By:

Name:

Title:

Date: __________ __, 20[ ]
EXHIBIT E-4

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Loan and Security Agreement (Building Loan) dated as of [ ] (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”), among [ ], and each lender from time to time party thereto.

Pursuant to the provisions of Section 3.12 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of Borrower within the meaning of section 881(c)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to Borrower as described in section 881(c)(3)(C) of the Code.

The undersigned has furnished Administrative Agent and Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform Borrower and Administrative Agent, and (2) the undersigned shall have at all times furnished Borrower and Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By:

Name:

Title:

Date: __________ __, 20[ ]
MEMBERS OF CONSORTIUM

ProHealth Proton Center Management LLC
Mount Sinai Proton Holding Company LLC
MSKCC Proton, Inc.
Montefiore Proton Acquisition, LLC
STATE OF NEW YORK 

COUNTY OF NEW YORK 

[****]*, being duly sworn, deposes and says:

1. That he is the Authorized Signatory of MM Proton I Investors, LLC, a Delaware limited liability company, the managing member of MM Proton I, LLC, a Delaware limited liability company (“Borrower”).

2. Borrower entered into the LOAN AND SECURITY AGREEMENT (BUILDING LOAN) (the “Agreement”) dated as of this 15th day of July, 2015, with JPMorgan Chase Bank, N.A. (“JPMorgan”) in its capacity as Administrative Agent (as hereinafter defined) and Collateral Agent (as hereinafter defined), having its address at [****], and each party (each, a “Lender”) identified and having its address at the location shown on Schedule 1.01 thereto, evidencing a loan in the maximum principal amount of up to $145,543,138 to finance the construction of certain Improvements to be made on certain premises described in Schedule 1.1 attached to the Agreement (the “Land”). The Agreement is intended to be filed in accordance with section 22 of the Lien Law of the State of New York (the “Lien Law”) and this affidavit is made pursuant to and in compliance with the Lien Law. All capitalized terms used herein and not otherwise defined shall have the same meanings assigned thereto in the Agreement.

3. That the consideration paid or to be paid for the Loan, and expenses incurred or to be incurred in connection therewith are or are estimated to be as follows:

   (a) Commitment Fees/Interest Reserve (Building Loan)   [****]

   TOTAL AMOUNT OF ABOVE ITEMS:   [****]

4. Certain of the foregoing amounts are based upon good faith estimates of costs or expenses not yet incurred and certain items listed above may cost more or less than such estimates. Borrower reserves the right to use unexpended amounts from any of said items to defray increases incurred in any other item or items listed above so long as the total amount of Advances expended on said items does not exceed the aggregate amount of said items shown above.

5. After payment of the above items, the net sum available to Borrower to pay contractors, subcontractors and materialmen for the Improvements will be [****], of which

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
[****] * constitutes a hard cost contingency which will only be available for the increased Building Costs resulting from change orders approved by Administrative Agent in its sole discretion and, in such event, will be specifically reserved for same.

6. If an Event of Default occurs under the Agreement, in the discretion of Lender, Advances may not be made under the Agreement. SUCH SUMS WOULD THEREFORE NOT BE AVAILABLE TO BORROWER FOR THE IMPROVEMENTS.

7. This affidavit is made by deponent because Borrower is a limited liability company, which deponent is the authorized signatory of MM Proton I Investors, LLC, a Delaware limited liability company, the managing member of Borrower and the statements herein are true to the knowledge of deponent.

Dated: July ____, 2015

________________________
Name: [****]

Sworn to before me this ______
day of July, 2015

________________________
Notary Public

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REQUEST FOR LOAN ADVANCE

JPMORGAN CHASE BANK, N.A., as Administrative Agent

**Draw #:_____**

**Project Name:** New York Proton Center  
225 East 126th Street  
New York, NY

**RE:** Request for Loan Advance

1. Reference is made to that LOAN AND SECURITY AGREEMENT (BUILDING LOAN) (the “Agreement”) dated as of this ___ day of ____________, 2015, is by and among MM PROTON I. LLC, a Delaware limited liability company (“Borrower”), JPMORGAN CHASE BANK, N.A., (“JPMorgan”) in its capacity as Administrative Agent (as hereinafter defined) and Collateral Agent (as hereinafter defined), and each party (each, a “Lender”) identified and having its address at the location shown on Schedule 1.01 to the Agreement. Capitalized terms herein, unless otherwise defined, are used as defined in the Agreement.

2. Borrower hereby requests an advance under the Agreement in the aggregate amount of $_______, consisting of:

<table>
<thead>
<tr>
<th>Loan</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Senior First Lien Loan</td>
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<tr>
<td>Senior Second Lien Loan</td>
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<tr>
<td>Subordinated Loan</td>
<td></td>
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<tr>
<td><strong>Total:</strong></td>
<td></td>
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</tbody>
</table>

3. Borrower acknowledges that this amount is subject to inspection, verification and available funds.

4. Borrower has attached hereto all items required by Section 2.04 of the Agreement as a part of the Draw Package, which is being provided in support of the disbursements requested in this Request for Loan Advance.
5. Borrower represents and warrants to Bank that except as otherwise specifically disclosed in such Draw Package and labeled as a “Disclosure” (a “Disclosure”):

a. To Borrower’s knowledge, Borrower is in compliance with all of the conditions to the applicable Advance set forth in this Agreement,

b. All representations and warranties made hereunder or under any of the Loan Documents, or in any certificate or other document executed by Borrower, each Guarantor, or to the best of Borrower’s knowledge any other Loan Party or Project Party as the case may be, and delivered to Administrative Agent pursuant to or in connection with this Agreement, are true and correct in all material respects as of the applicable Borrowing Date except to the extent such representation and warranty is made as of a specified date, in which case such representation and warranty shall have been true and correct on and as of such specified date,

c. To Borrower’s knowledge, no Default or Unmatured Default exists as of the applicable Borrowing Date,

d. Any completed construction is substantially in accordance with the Plans and Specifications,

e. All costs for the payment of which the Lenders have previously advanced funds have in fact been paid to the appropriate vendors and

f. To Borrower’s knowledge, Borrower continues to be in compliance in all material respects with all of the terms, covenants and conditions contained in this Agreement. If Administrative Agent elects to make an Advance notwithstanding matters which are the subject of a Disclosure, the waiver of such matters shall be effective for that Advance only, and unless subsequently waived, such matters must be corrected before the next Advance.

g. All change orders or changes to the project budget have been submitted to and approved by Administrative Agent.

h. All previous Advances have been used solely for the purposes set forth in the Agreement.

i. All of the requested Advance will be used solely to pay obligations set forth on the attachment hereto.

j. There are no liens outstanding against the Facility, except for liens and security interests in favor of Collateral Agent.

k. The Loans are “in balance” as required by Section 2.06 of the Agreement.

6. Disbursement of the requested Advance may be subject to the receipt by the Administrative Agent of the report of the Independent Engineer as required by Section 2.02(j) of the Agreement.

7. Disbursement of the requested Advance may be subject to the receipt by the Administrative Agent of a bring-down endorsement and other endorsements to the Title Policy as required by Section 2.02(k) of the Agreement.
8. Borrower certifies that the statements made herein and in any documents submitted herewith are true and has duly caused this Request for Loan Advance to be signed on its behalf by the undersigned, thereto duly authorized.

9. Borrower requests that this draw be funded and that the disbursement funds be deposited in the Borrower’s Operating Account under the Collateral Account Pledge Agreement.

Date: 

MM PROTON I. LLC, a Delaware limited liability company

By: ____________________________________________
Name: __________________________________________
Title: ___________________________________________
PROJECT MANAGEMENT TEAM MEMBERS

1. [****] *

2. [****]

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EXHIBIT K

[RESERVED]

K-1
* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT (BUILDING LOAN)

dated as of August 5, 2015

by and among

MM PROTON I, LLC,

as Borrower,

JPMORGAN CHASE BANK, N.A.,

as Administrative Agent and Collateral Agent,

and

the Lenders referenced herein

Building Loan Amount - $145,543,138

This Agreement was prepared by:

[****] *

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT  
(BUILDING LOAN)  

THIS FIRST AMENDMENT TO LOAN AND SECURITY AGREEMENT (BUILDING LOAN) (the “Amendment”) dated as of this 5th day of August, 2015, is by and among MM PROTON I, LLC, a Delaware limited liability company (“Borrower”), having its address at [****], JPMORGAN CHASE BANK, N.A. (“JPMorgan”) in its capacity as Administrative Agent (as defined in the Building Loan Agreement) and Collateral Agent (as defined in the Building Loan Agreement), having its address at [****], and each party (each, a “Lender”) identified as a Lender on the signature pages hereto and having its address at the location shown on Schedule A hereto.

RECITALS

WHEREAS, Borrower, JPMorgan and the Lenders are parties to that certain Loan and Security Agreement (Building Loan) dated as of the 15th day of July, 2015 and filed in the Office of the New York County Clerk on July 16, 2015 under Index No. 31195 (the “Building Loan Agreement”), pursuant to which Lenders have made a loan to Borrower in the maximum principal amount of $145,543,138;

WHEREAS, capitalized terms herein are used as defined in the Building Loan Agreement;

WHEREAS, the parties hereto desire to amend the Building Loan Agreement as provided herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. Amendments. The Building Loan Agreement is hereby modified as follows:

   a. The definition of “Interest Payment Date” in the Building Loan Agreement is hereby amended and restated, effective July 31, 2015, as follows:

   “Interest Payment Date” means for each of the Senior First Lien Loans and Senior Second Lien Loans, the first (1st) day of each calendar month, (a) during the period commencing on the first such date to occur at least 30 days after the Closing Date and ending on and including 1st day of the calendar month first preceding the Facility Substantial Completion Date and (b) during the period commencing on the first (1st) day of the fourth full calendar month following the Facility Substantial Completion Date and ending on and including the Maturity Date of such Loan.

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b. Section 2.01(c) of the Building Loan Agreement is hereby amended and restated as follows:

Each Advance hereunder, including Advances to pay interest on the Senior First Lien Loans and Senior Second Lien Loan pursuant to Section 2.08, hereunder shall consist of Loans solely from the Subordinated Lender until such time as the Subordinated Lender shall have fully funded the Aggregate Subordinated Loan Commitment hereunder and, thereafter, of Senior First Lien Loans and Senior Second Lien Loans ratably in proportion to the ratio that the Aggregate Senior First Lien Loan Commitment bears to the Aggregate Senior Second Lien Loan Commitment, with (i) such Senior First Lien Loans made by the Senior First Lien Lenders ratably in proportion to their Applicable Percentage, and (ii) such Senior Second Lien Loans made by the Senior Second Lien Lenders ratably in proportion to their Applicable Percentage.

2. **No Other Amendments.** Except as expressly amended hereby, the Building Loan Agreement is not amended in any respect, and, as so amended hereby, the Building Loan Agreement shall continue in full force and effect. Borrower represents and warrants to Administrative Agent that the outstanding principal amount of the Loan (after giving effect to any advances made concurrently herewith) is $145,543,138.00, that it has no offsets, defenses or counterclaims with respect to the Building Loan Agreement or any of the loan documents executed and delivered in connection therewith.

3. **Incorporation by Reference.** Sections 11.08, 11.09 and 11.10 of the Building Loan Agreement are hereby incorporated by reference as applicable to this Amendment, mutandis mutandi.

4. **Section 22 Lien Law Affidavit.** There have been no amendments or modifications to the Section 22 Lien Law affidavit annexed as Exhibit G to the Loan Agreement, a copy of which is annexed hereto and has been updated for purposes of this Amendment.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Loan and Security Agreement (Building Loan) as of the day and year first above written.

MM PROTON I, LLC,
a Delaware limited liability company

By: MM Proton I Investors, LLC,
a Delaware limited liability company,
its Managing Member

By: [****] *
Name: [****]
Title: [****]

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent, Collateral Agent and as a Senior First Lien Lender

By: [****]
Name: [****]
Title: [****]

VARIAN MEDICAL SYSTEMS INTERNATIONAL AG
as a Senior First Lien Lender

By: [****]
Name: [****]
Title: [****]

SPECIAL SITUATIONS INVESTING GROUP II, LLC,
as a Senior Second Lien Lender

By: [****]
Name: [****]
Title: [****]

VARIAN MEDICAL SYSTEMS INTERNATIONAL AG,
as a Subordinated Lender

By: [****]
Name: [****]
Title: [****]*

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COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _________________

On the ______ day of __________ in the year 2015, before me the undersigned personally appeared ____________________________ Personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Sign and affix stamp

STATE OF NEW YORK

COUNTY OF NEW YORK

On the ___ day of August in the year 2015, before me, the undersigned, a Notary Public in and for said state, personally appeared [****] *, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

Notary Public

Sign and affix stamp

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STATE OF ________________ )
COUNTY OF ________________ )

On the _______ day of ___________ in the year 2015, before me the undersigned personally appeared ____________ Personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

__________________________________________
Notary Public

Sign and affix stamp

STATE OF ________________ )
COUNTY OF ________________ )

On the _______ day of ___________ in the year 2015, before me the undersigned personally appeared ____________ Personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

__________________________________________
Notary Public

Sign and affix stamp
STATE OF ________________
) ss:

COUNTY OF ________________

On the ______ day of __________ in the year 2015, before me the undersigned personally appeared __________________________ Personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

__________________________________________________________________________

Notary Public

Sign and affix stamp
SCHEDULE A
LENDERS

Name/Address

VARIAN MEDICAL SYSTEMS INTERNATIONAL AG
[****] *

SPECIAL SITUATIONS INVESTING GROUP II, LLC
[****]

VARIAN MEDICAL SYSTEMS INTERNATIONAL AG
[****]

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STATE OF NEW YORK)
COUNTY OF NEW YORK)

[****] *, being duly sworn, deposes and says:

1. That he is the Authorized Signatory of MM Proton I Investors, LLC, a Delaware limited liability company, the managing member of MM Proton I, LLC, a Delaware limited liability company (“Borrower”).

2. Borrower entered into the LOAN AND SECURITY AGREEMENT (BUILDING LOAN) (the “Original Agreement”) dated as of July 15, 2015 and filed in the Office of the New York County Clerk on July 16, 2015 under Index No. 31195, with JPMorgan Chase Bank, N.A. (“JPMorgan”) in its capacity as Administrative Agent (as hereinafter defined) and Collateral Agent (as hereinafter defined), having its address at [****], and each party (each, a “Lender”) identified and having its address at the location shown on Schedule 1.01 thereto, evidencing a loan in the maximum principal amount of up to $145,543,138 to finance the construction of certain Improvements to be made on certain premises described in Schedule 1.1 attached to the Agreement (the “Land”), which Agreement is being amended pursuant to that certain First Amendment to Loan and Security Agreement (Building Loan) dated as of the date hereof (the Original Agreement, as amended, collectively, the “Agreement”). The Agreement is intended to be filed in accordance with section 22 of the Lien Law of the State of New York (the “Lien Law”) and this affidavit is made pursuant to and in compliance with the Lien Law. All capitalized terms used herein and not otherwise defined shall have the same meanings assigned thereto in the Agreement.

3. That the consideration paid or to be paid for the Loan, and expenses incurred or to be incurred in connection therewith are or are estimated to be as follows:

   (a) Commitment Fees/Interest Reserve (Building Loan) [****]

   TOTAL AMOUNT OF ABOVE ITEMS: [****]

4. Certain of the foregoing amounts are based upon good faith estimates of costs or expenses not yet incurred and certain items listed above may cost more or less than such estimates. Borrower reserves the right to use unexpended amounts from any of said items to defray increases

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incurred in any other item or items listed above so long as the total amount of Advances expended on said items does not exceed the aggregate amount of said items shown above.

5. After payment of the above items, the net sum available to Borrower to pay contractors, subcontractors and materialmen for the Improvements will be [****] *, of which $[****] constitutes a hard cost contingency which will only be available for the increased Building Costs resulting from change orders approved by Administrative Agent in its sole discretion and, in such event, will be specifically reserved for same.

6. If an Event of Default occurs under the Agreement, in the discretion of Lender, Advances may not be made under the Agreement. SUCH SUMS WOULD THEREFORE NOT BE AVAILABLE TO BORROWER FOR THE IMPROVEMENTS.

7. This affidavit is made by deponent because Borrower is a limited liability company, which deponent is the authorized signatory of MM Proton I Investors, LLC, a Delaware limited liability company, the managing member of Borrower and the statements herein are true to the knowledge of deponent.

Dated: August ____, 2015

________________________
Name: [****]

Sworn to before me this ____ day of August, 2015

________________________
Notary Public

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LOAN AND SECURITY AGREEMENT (PROJECT LOAN)

dated as of July 15, 2015

by and among

MM PROTON I, LLC,

as Borrower,

JPMORGAN CHASE BANK, N.A.,

as Administrative Agent and Collateral Agent,

and

the Lenders referenced herein

$97,106,862

This Agreement was prepared by:

[****] *

*Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
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<th>Article I</th>
<th>Defined Terms</th>
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<td>Definitions</td>
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<td>1.03</td>
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<td>Loans and Advances</td>
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iv
THIS LOAN AND SECURITY AGREEMENT (PROJECT LOAN) (the “Agreement”) dated as of this 15th day of July, 2015, is by and among MM PROTON I, LLC, a Delaware limited liability company (“Borrower”), having its address at [***], JPMORGAN CHASE BANK, N.A., (“JPMorgan”) in its capacity as Administrative Agent (as hereinafter defined) and Collateral Agent (as hereinafter defined), having its address at [***], and each party (each, a “Lender”) identified and having its address at the location shown on Schedule 1.01 hereto.

RECITALS

WHEREAS, Borrower is acquiring from the New York City Economic Development Corporation, by deed and by lease as more particularly described herein, rights to that certain real property located in the City of New York, Borough of Manhattan, and State of New York, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “Land”);

WHEREAS, Borrower proposes to construct or cause to be constructed upon the Land certain Improvements (as hereinafter defined) in accordance with the Plans and Specifications (as hereinafter defined);

WHEREAS, Borrower proposes to lease the Property (as hereinafter defined), as so improved, to New York Proton Management, LLC, a New York limited liability company (“Facility Lessee”) pursuant to that certain Facility Lease (as hereafter defined);

WHEREAS, pursuant to the Facility Lease, Facility Lessee will install a Proton System (as hereinafter defined) to provide proton therapy in four treatment rooms (the Property, as improved by the Proton System, the “Facility”);

WHEREAS, Borrower has requested, and the Lenders have agreed to provide, two separate loans to Borrower:

(i) For the construction of the Improvements pursuant to that certain Loan and Security Agreement (Building Loan), dated of even date herewith, among Borrower, Administrative Agent, Collateral Agent and the Lenders (the “Building Loan Agreement”);

(ii) For certain other costs relating to the Facility on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

*Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
ARTICLE I
DEFINED TERMS

1.01 Definitions. The following terms shall have the meanings defined below. Unless otherwise specified, any reference to any instrument, document or agreement shall include any and all extensions, renewals, modifications, amendments, supplements and replacements therefor or thereto, and any reference to any party shall include its successor and assigns.


“Administrative Agent” means JPMorgan, in its capacity as administrative agent for the Lenders hereunder.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by Administrative Agent.

“Administrative Services Agreement” means that certain Administrative Services and License Agreement, dated as of even date herewith, by and between Facility Lessee and Operator.

“Advance” means a borrowing hereunder, made by the Lenders to Borrower, on a Borrowing Date.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. Notwithstanding anything herein to the contrary, in no event shall any Lender be considered an “Affiliate” of any Loan Party.

“Aggregate Loan Commitment” means, as of any date of determination, the aggregate of the Aggregate Senior First Lien Loan Commitment, the Aggregate Senior Second Lien Loan Commitment and the Aggregate Subordinated Loan Commitment.

“Aggregate Senior First Lien Loan Commitment” means, as of any date of determination, the aggregate of the Commitments of all the Senior First Lien Lenders. As of the date hereof, the Aggregate Senior First Lien Loan Commitment is $54,601,424.

“Aggregate Senior Second Lien Loan Commitment” means, as of any date of determination, the aggregate of the Commitments of all the Senior Second Lien Lenders. As of the date hereof, the Aggregate Senior Second Lien Loan Commitment is $29,255,439.

“Aggregate Subordinated Loan Commitment” means, as of any date of determination, the aggregate of the Commitments of all the Subordinated Lenders. As of the date hereof, the Aggregate Subordinated Loan Commitment is $13,250,000.

“Agreement” has the meaning set forth in the Preamble.
“Agreement Among Lenders” means the Agreement Among Lenders of even date herewith executed by and among the Collateral Agent and the Lenders.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to Borrower from time to time concerning or relating to bribery or corruption.

“Applicable Percentage” means, with respect to any Lender, the percentage of the Aggregate Senior First Lien Loan Commitment, Aggregate Senior Second Lien Loan Commitment or Aggregate Subordinated Loan Commitment, as the case may be, represented by such Lender’s Commitment; provided that in the case of Section 10.11 hereof when a Defaulting Lender shall exist, “Applicable Percentage” means the percentage of the Aggregate Senior First Lien Loan Commitment, Aggregate Senior Second Lien Loan Commitment or Aggregate Subordinated Loan Commitment, as the case may be, (disregarding any Defaulting Lender’s Commitment) represented by such Lender’s Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments.

“Appraisal” means a written statement setting forth an opinion of the market value of the Facility that (i) has been independently and impartially prepared by a qualified appraiser, holding an MAI designation licensed or certified under the laws of New York satisfying the requirements of FIRREA, directly engaged by Administrative Agent, (ii) complies with all applicable federal and state laws and regulations dealing with appraisals or valuations of real property, and (iii) has been reviewed as to form and content and approved by Administrative Agent, in its reasonable discretion.

“Approved Fund” has the meaning set forth in Section 11.04(b)(ii) hereof.

“Architect” means VOA Architecture PLLC.

“Architect’s Certificate” means a certificate of Architect in form and substance acceptable to Administrative Agent.


“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 11.04 hereof), and accepted by Administrative Agent, in the form of Exhibit D attached hereto or any other form approved by Administrative Agent.

“Assignments and Consents” means each of the (i) Assignment of Architectural Services Agreement (Construction Administration) and Consent, (ii) Assignment of Construction Contract and Consent, (iii) Assignment of Proton System Agreements and Consent, (iv) Assignment of Leases and Consent, (v) Assignment of Leases and Rents (Facility Lessee) and Consent, (vi)
Assignment of Facility Lessee Operating Agreement and Consent, and (vii) Assignment of Leasehold Mortgage and Consent and (viii) Assignment and Subordination of Development Agreement and Consent and (ix) Assignment of Architectural Services Agreement (Design) and Consent.

“Assignment and Subordination of Development Agreement and Consent” means the Assignment and Subordination of Development Agreement of even date herewith executed by Borrower in favor of Collateral Agent, for the benefit of the Secured Parties, together with the Consent and Agreement of the Developer, as amended or otherwise modified from time to time.

“Assignment of Architectural Services Agreement (Design) and Consent” means the Assignment of the Architectural Services Agreement (Design), relating to the Architectural Services Agreement (Design), of even date herewith executed by Facility Lessee in favor of Borrower, and Borrower in favor Collateral Agent, for the benefit of the Secured Parties, together with the Consent and Agreement of the Architect.

“Assignment of Leases and Rents (Facility Lessee) and Consent” means the Assignment of Leases and Rents (Facility Lessee) of even date herewith executed by Facility Lessee in favor of Borrower, and executed by Borrower in favor Collateral Agent, for the benefit of the Secured Parties, together with the Consent and Agreement of Operator, as amended or otherwise modified from time to time.

“Assignment of Construction Contract and Consent” means the Assignment of Construction Contract of even date herewith executed by Borrower in favor of Collateral Agent, for the benefit of the Secured Parties, together with the Consent and Agreement of the Contractor, as amended or otherwise modified from time to time.

“Assignment of Architectural Services Agreement (Construction Administration) and Consent” means the Assignment of Architectural Services Agreement (Construction Administration) of even date herewith executed by Borrower in favor of Collateral Agent, for the benefit of the Secured Parties, together with the Consent and Agreement of Architect, as amended or otherwise modified from time to time.

“Assignment of Facility Lessee Operating Agreement and Consent” means the Assignment of Facility Lessee Operating Agreement of even date herewith executed by Facility Lessee in favor of Borrower, and executed by Borrower in favor Collateral Agent, for the benefit of the Secured Parties, relating to the pledge of Supplemental Capital Contribution Obligation, together with the Consent and Agreement of Consortium, as amended or otherwise modified from time to time.

“Assignment of Leases and Consent” means the Assignment of Leases and Rents (Project Loan) of even date herewith executed by Borrower in favor of Collateral Agent, for the benefit of the Secured Parties, together with the Consent and Agreement of Facility Lessee, as amended or otherwise modified from time to time.

“Assignment of Leasehold Mortgage and Consent” means the Assignment of Leasehold Mortgage of even date herewith executed by Borrower in favor of Collateral Agent.
for the benefit of the Secured Parties, together with the Consent and Agreement of Facility Lessee, as amended or otherwise modified from time to time.

“Assignment of Proton System Agreements and Consent” means the Assignment of Varian Agreements, relating to the Proton System Purchase Agreement and the Proton System Operations and Maintenance Agreement, of even date herewith executed by Facility Lessee in favor of Borrower, and Borrower in favor Collateral Agent, for the benefit of the Secured Parties, together with the Consent and Agreement of Proton System Supplier, as amended or otherwise modified from time to time.

“Balancing Deposit” means an Interest Balancing Deposit, a Non-Interest Balancing Deposit, or a Proton System Balancing Deposit, as applicable.

“Bankruptcy Event” means, with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business, appointed for it, or, in the good faith determination of Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof if and so long as such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality), to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person or admits in writing its inability to pay debts.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” has the meaning set forth in the preamble.

“Borrower Collateral” means all right, title and interest of Borrower in and to the following, whether now existing or hereafter arising: (a) the Facility, (b) the Project Documents, (c) the Collateral Account Pledge Agreement, including any Collateral Account, (d) Borrower’s interest in any Facility Lessee Collateral, including any interest created under any Assignment and Consent or the Leasehold Mortgage, (e) the Facility Lessee Loan and Facility Lessee Loan and Security Agreement, (f) any account, general intangible or payment intangible of every kind, nature and description, arising out of or relating to any of the foregoing, (g) all other real or personal property of Borrower, including “goods”, “instruments”, “chattel paper”, “accounts”, “securities entitlements” and ‘general intangibles” of Borrower and (h) all cash and noncash proceeds (including insurance proceeds) of all of the foregoing property, all products thereof and all additions and accessions thereto, substitutions therefor and replacements thereof.

“Borrower Construction Account” means the Borrower Construction Account established under the Collateral Account Pledge Agreement into which proceeds of the Loans hereunder may be deposited at the direction of the Administrative Agent.
"Borrower Balancing Deposit" means an Interest Balancing Deposit or a Non-Interest Balancing Deposit, as applicable.

"Borrower Estoppel" means that certain estoppel certificate dated the Closing Date, pursuant to which Borrower certifies that no default exists under the Facility Lease, and that the Facility Lease is in full force and effect.

"Borrower Managing Member" means MM Proton I Investors, LLC until such time as a Person designated by Borrower Profit Participant shall succeed to the authority of the managing member pursuant to the terms of the Operating Agreement of Borrower or pursuant to that certain Equity Participation Agreement between MM Proton I Investors, LLC and Borrower Profit Participant, at which time Borrower Managing Member shall mean such Person designated by Borrower Profit Participant as specified in a notice from Borrower Profit Participant to the Administrative Agent.

"Borrower Member Collateral" means all of the member interests, as pledged by the Borrower Managing Member, and any Borrower Non-Managing Members in Borrower who may subsequently join as pledgor, to Collateral Agent pursuant to the Borrower Member Pledge Agreement, including all cash and noncash proceeds of all of the foregoing property, all products thereof and all additions and accessions thereto, substitutions therefor and replacements thereof.

"Borrower Member Financing Statement" means the UCC financing statement covering the security interests in personal property granted by Borrower Managing Member to Collateral Agent for the benefit of the Secured Parties, in the Borrower Member Pledge Agreement for filing with the Secretary of State of the State of Delaware.

"Borrower Member Pledge Agreement" means the Borrower Member Pledge Agreement of even date herewith executed by the Borrower Managing Member in favor of Collateral Agent, for the benefit of the Secured Parties, as amended or otherwise modified from time to time.

"Borrower Non-Managing Members" means each member of Borrower that is not Borrower Managing Member.

"Borrower Financing Statement" means the UCC financing statement covering the security interests in personal property granted by Borrower to Collateral Agent for the benefit of the Secured Parties, in the Loan Documents for filing with the Secretary of State of the State of Delaware.

"Borrower Operating Account" means the Borrower Operating Account established under the Collateral Account Pledge Agreement into which proceeds of the Loans hereunder will be deposited, unless directed to the Borrower Construction Account by the Administrative Agent.

"Borrower Profit Participant" means Goldman, Sachs & Co., a Delaware corporation.

"Borrower’s Initial Equity Requirement" means $2,022,000, less amounts credited to Borrower for costs incurred prior to the Closing Date, as approved by the Administrative Agent.
“**Borrowing Date**” means a date on which an Advance is made hereunder.

“**Building Costs**” means costs for work, labor and materials required to demolish pre-existing structures on the Property and construct and complete the Improvements, including, without limitation, those items identified as “Building Costs” in the Project Budget and constituting hard costs of the Improvements under the Lien Law and repayments of the Facility Lessee Reverse Loan in respect of proceeds thereof used to pay Building Costs.

“**Building Interface Document**” means the agreement between Proton System Supplier, Facility Lessee and Borrower which sets forth the responsibilities of Facility Lessee, Contractor and Proton System Supplier with respect to construction of the Improvements for installation of the Proton System, the schedule for such construction and installation, and the responsibilities for each with respect to all of the aspects of such construction and installation.

“**Building Loan Agreement**” has the meaning set forth in the **Recitals**.

“**Building Loan Mortgage**” means the “Mortgage” as defined in the Building Loan Agreement.

“**Building Loan Notes**” means the “Notes” as defined in the Building Loan Agreement.

“**Business Day**” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

“**Capital Lease Obligations**” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“**Certification of Non-Foreign Status**” means an affidavit, signed under penalty of perjury by an authorized officer of Borrower, stating (a) that Borrower is not a “foreign corporation,” “foreign partnership,” “foreign trust,” or “foreign estate,” as those terms are defined in the Code and the regulations promulgated thereunder, (b) Borrower’s U.S. employer identification number, and (c) the address of Borrower’s principal place of business. Such affidavit shall be consistent with the requirements of the regulations promulgated under section 1445 of the Code, and shall otherwise be in form and substance acceptable to Administrative Agent.

“**Change in Law**” means the occurrence after the date of this Agreement or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement, of: (a) the adoption of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority or (c) compliance by any Lender (or, for purposes of Section 3.08(b) hereof, by any lending office of such Lender or by such Lender’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that notwithstanding anything herein to the contrary,
(i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued or implemented.

“Charges” has the meaning set forth in Section 11.12 hereof.

“Closing Date” means the earlier of the date of the first disbursement of the Loan or the date all the conditions to the first disbursement have been satisfied, including recording the Mortgage.

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

“Collateral Account” means each of the accounts established under the Collateral Account Pledge Agreement, including each Borrower Construction Account and the Facility Lessee Construction Account.

“Collateral Account Pledge Agreement” means that Collateral Account Pledge Agreement, of even date herewith among Operator, Borrower, Facility Lessee and Collateral Agent, as amended or otherwise modified from time to time.

“Collateral Agent” means JPMorgan, in its capacity as collateral agent for the Lenders hereunder.

“Commitment” means, for each Lender, the amount set forth on Schedule 1.01 or as set forth in any assignment agreement that has become effective pursuant to Section 11.04 hereof, as such amount may be modified from time to time pursuant to the terms hereof and provided that the Commitments of each Senior First Lien Lender and each Senior Second Lien Lender shall increase Dollar for Dollar with the termination of its unused Commitment under the Building Loan Agreement pursuant to Section 2.01(f).

“Completion of the Facility” means (i) that valid certificates of occupancy (which include temporary certificates of occupancy) for the core and shell of all Improvements shall have been issued by the Building Department of the City of New York and shall be in full force and effect; (ii) that all Governmental Approvals which are required for the then current stage of construction of the Improvements (and which can be issued notwithstanding the fact that the Proton System may not have been completely installed) have been validly issued for the construction of the Improvements; (iii) that the Improvements were built and the Proton System was installed, each in accordance with the Plans and Specifications and all Governmental Approvals in all material respects (including, without limitation, the completion of all Punch List Items) and (iv) that Administrative Agent has received evidence reasonably acceptable to it that the foregoing requirements set forth in clauses (i) – (iii) above have been satisfied.
“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consortium” means each member of the Facility Lessee, from time to time, and as of the date hereof, as listed on Exhibit F hereto and each member from time to time after the date hereof.

“Construction Contract” means that certain AIA Document A102 - Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus Fee with a Guaranteed Maximum Price), dated of even date herewith, by and between Borrower and Contractor, together with all exhibits, schedules and attachments thereto, including the Building Interface Document the General Conditions and other Contract Documents (as defined therein), providing for the construction of the Improvements.

“Construction Schedule” means a construction schedule for the Facility in form and substance satisfactory to Administrative Agent.

“Contract of Sale” means that certain Amended and Restated Contract of Sale, dated as of December 30, 2013, between EDC and Facility Lessee, as assigned by Facility Lessee to Borrower pursuant to that certain Assignment of Amended and Restated Contract of Sale, dated the Closing Date.

“Contractor” means Gilbane Inc., a Rhode Island corporation.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Cost Grouping” has the meaning set forth in Section 2.08 hereof.

“Credit Party” means Administrative Agent or any other Lender.

“Debtor Relief Laws” means any applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, fraudulent conveyance, reorganization, or similar laws affecting the rights, remedies or recourse of creditors generally, including without limitation, the United States Bankruptcy Code and all amendments thereto, as are in effect from time to time during the term of the Loans.

“Default” has the meaning set forth in Section 8.01 hereof.

“Default Rate” has the meaning set forth in Section 3.04(b) hereof.

“Defaulting Lender” means any Lender that (a) has failed, within 2 Business Days of the date required to be funded or paid, to (i) fund any portion of its Commitment or Loan, or (ii) pay over to any Credit Party any other amount required to be paid by it hereunder, unless in the case of clause (i) above, such Lender notifies Administrative Agent in writing that such failure is
the result of such Lender’s good faith determination that a condition precedent to funding (identified with reasonably specificity and including the particular Default, if any) has not been satisfied; (b) has notified Borrower or any Credit Party in writing, or has made a public statement, to the effect that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular Default, if any) cannot be satisfied) or generally under other agreements in which it commits to extend credit; (c) has failed, within 3 Business Days after request by a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations to fund under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c), upon such Credit Party’s receipt of such certification in form and substance satisfactory to it and Administrative Agent; or (d) has become the subject of a Bankruptcy Event.

“Developer” means [****]*, a Massachusetts limited liability company.

“Developer Fee” means the fee and other costs payable to Developer under the Development Agreement subject to Section 2.08 hereof.

“Development Agreement” means that certain Development Agreement, dated as of even date herewith, by and between Borrower and Developer.

“Disclosure” has the meaning set forth in Section 2.04 hereof.

“dollars” or “$” refers to lawful money of the United States of America.

“Draw Package” has the meaning set forth in Section 2.04(a) hereof.

“Draw Request” has the meaning set forth in Section 2.04(a) hereof.

“EDC” means the New York City Economic Development Corporation.

“EDC Deed” means the bargain and sale deed for the Property delivered by EDC to Borrower, pursuant to the Contract of Sale, and all items to be delivered thereunder.

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

“Electronic System” means any electronic system, including e-mail, e-fax, Intralinks®, ClearPar® and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by Administrative Agent or any other Person, providing for access to data protected by passcodes or other security system.

*Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions
“Employee Benefit Plan” means an employee benefit plan as defined in section 3(3) of ERISA, maintained, sponsored by or contributed to by Borrower or any ERISA Affiliate.

“Environmental Indemnity Agreement” means that certain Environmental Indemnity Agreement of even date herewith executed by Borrower in favor of Collateral Agent, for the benefit of the Secured Parties, as amended or otherwise modified from time to time.

“Environmental Laws” means any local, state or federal law, rule (having the effect of law), regulation or order (having the effect of law) relating to the manufacture, storage, use, handling, discharge, transport, disposal, treatment or clean-up of hazardous or toxic substances or materials, including, without limitation, “CERCLA”, “RCRA”, or state superfund or environmental clean-up statutes.

“Equity Participation Agreement” means that certain Equity Participation Agreement, dated of even date herewith, between the Borrower Profit Participant and Borrower.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means Borrower or any corporation, trade or business that along with Borrower is treated as a single employer under sections 414(b), 414(c), 414(m) or 414(o) of the Code.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. Federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by Borrower under Section 3.11(b) hereof) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.09 hereof, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender acquired the applicable interest in a Loan or Commitment or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.09(f) hereof and (d) any U.S. Federal withholding Taxes imposed under FATCA.

“Facility” has the meaning set forth in the Recitals.

“Facility Lease” means that certain Lease Agreement, dated as of even date herewith, between Borrower, as lessor, and Facility Lessee, as lessee, of the Facility, together with all exhibits, schedules and attachments thereto, including the Work Letter.

“Facility Lessee” has the meaning set forth in the Recitals.
“Facility Lessee Collateral” has the meaning defined in the Facility Lessee Loan and Security Agreement, subject to a Lien or security interest granted to Borrower therein and assigned to Collateral Agent under the Loan Documents.

“Facility Lessee Construction Account” means the Facility Lessee Construction Accounts established under the Collateral Account Pledge Agreement.

“Facility Lessee Financing Statement” means the UCC financing statement(s) covering the security interests in personal property granted by Facility Lessee to Borrower in the Facility Lessee Loan and Security Agreement and the Leasehold Mortgage and assigned to Collateral Agent for the benefit of the Secured Parties, for filing with the Secretary of State of the State of New York.

“Facility Lessee Loan” means a loan by Borrower to Facility Lessee, in an amount not to exceed $25,881,698.44 to fund amounts payable by Facility Lessee to Proton System Supplier pursuant to the Proton System Purchase Agreement, as evidenced by the Loan and Security Agreement (Facility Lessee), and further secured by the Leasehold Mortgage.

“Facility Lessee Loan and Security Agreement” means the Loan and Security Agreement (Facility Lessee) between Facility Lessee and Borrower, providing for the Facility Lessee Loan.

“Facility Lessee Manager” means ProHEALTH Proton Center Management LLC, a Delaware limited liability company.

“Facility Lessee Operating Agreement” means that Second Amended and Restated Operating Agreement of Facility Lessee, dated as of even date herewith.

“Facility Lessee Project Cost Advance” means $59,250,000 less Facility Lessee’s previously advanced funds, payable by Facility Lessee to Collateral Agent on the Closing Date, as the initial advance of funds payable by Facility Lessee under the Facility Lease in respect of Facility Lessee Project Costs.

“Facility Lessee Project Costs” means “Lessee’s Project Costs” as defined in Schedule B to the Facility Lease, which includes, but is not limited to, all Proton System Costs.

“Facility Lessee Reverse Loan” has the meaning defined in the Collateral Account Pledge Agreement.

“Facility Substantial Completion Date” means the “4th Proton Treatment Room Substantial Completion Date” as defined in the Work Letter.

“FATCA” means sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to section 1471(b)(1) of the Code.
“Federal Funds Effective Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/16 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/16 of 1%) of the quotations for such day for such transactions received by Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Final Completion” of the Facility means that (i) the Facility is lien free, (ii) “Land and Building Improvements Substantial Completion” has occurred with respect to the “Land and Building Improvements” (as each such term is defined in the Work Letter), and (iii) “Proton Treatment Room Substantial Completion” has occurred with respect to all four “Proton Treatment Rooms” (as each such term is defined in the Work Letter) and (iv) a valid certificate of occupancy continues to be effect, in each case as approved by Administrative Agent and the Independent Engineer in each of their sole but reasonable discretion.

“Force Majeure Causes” means strikes, lockouts or other labor disputes, severe weather conditions, earthquakes or other acts of God, inability to obtain or maintain permits, labor, equipment or materials due to delay or restrictions of any government or governmental authority (including any agency or political subdivision thereof), enemy action, civil commotion, fire or other casualty, acts of war or terrorism, court orders, electrical power surges, failure in public supplies (e.g., water, electricity, etc.), flood, tornadoes, earthquakes and other natural disasters, inclement weather, epidemics, and other causes beyond Borrower’s reasonable control.

“Foreign Lender” means (a) if Borrower is a U.S. Person, a Lender, with respect to such Borrower, that is not a U.S. Person, and (b) if Borrower is not a U.S. Person, a Lender, with respect to such Borrower, that is resident or organized under the laws of a jurisdiction other than that in which Borrower is resident for tax purposes.

“Future Commitment” has the meaning set forth in Section 10.10(d) hereof.

“GAAP” means generally accepted accounting principles in the United States of America.

“Governmental Approvals” means all approvals, consents, waivers, orders, acknowledgments, authorizations, permits, licenses and/or certificates of occupancy required under applicable Legal Requirements, or the Project Documents, to be obtained from each Governmental Authority having jurisdiction over the Facility and the construction and operation thereof for the construction of the Improvements and/or the use, occupancy and operation of the Improvements following completion of construction, as the context requires, including, without limitation, all land use, landmark, building, subdivision, zoning and similar ordinances and regulations promulgated by any Governmental Authority.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising
executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Guarantor” means (i) each Principal, in respect of the Recourse Carve-Out Guaranty (Principals), (ii) each Principal, in respect of the Primary Completion Guaranty, (iii) each member of the Consortium, in respect of the Recourse Carve-Out Guaranty (Consortium), (iv) each hospital parent of each member of the Consortium, in respect of the Recourse Carve-Out Judgment Guaranty and (v) Facility Lessee, in respect of the Secondary Completion Guaranty.

“Hazardous Substances” means and includes all hazardous and toxic substances, wastes or materials, hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, urea formaldehyde insulation, radioactive materials, biological substances and any other kind and/or type of pollutants or contaminatees (including, without limitation, asbestos and raw materials which include hazardous constituents), sewage sludge, industrial slag, solvents, toxin or mycotoxins and/or any other similar substances, or materials which are included under or regulated by any Environmental Laws; provided, however, that “Hazardous Substances” shall not include (a) materials customarily used in the construction and demolition of buildings, or (b) cleaning materials and office products customarily used in the operation of properties such as the Facility, to the extent such materials described in the preceding clauses (a) and (b) are stored, handled, used and disposed of in compliance with all Environmental Laws.

“Improvements” means the (a) improvements contemplated by the Plans and Specifications and to be constructed on the Land pursuant the Construction Contract, (b) all other improvements to be built or installed by Borrower, including, but not limited to, landscaping, striping, signage, trash compactors, curbing and lighting contemplated by the Plans and Specifications or otherwise required by any Governmental Authority, (c) all construction of the off-site improvements, including all off-site improvements required to be constructed by Borrower pursuant to the Project Documents, and (d) all other furniture, fixtures and equipment to be installed by Borrower contemplated by the Plans and Specifications in accordance with the Plans and Specifications therefor, all as any of the foregoing may be modified from time to time by reason of a modification to the Plans and Specifications in accordance with the terms of this Agreement. For the avoidance of doubt, the term “Improvements” does not include the Proton
System or any work to be performed by the Proton System Supplier or by the Facility Lessee under the Proton System Purchase Agreement, Facility Lease or Building Interface Document.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, and (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Indemnitee” has the meaning set forth in Section 11.03(b) hereof.

“Independent Engineer” means Fulcrum Company, or any successor thereto selected by Administrative Agent.

“Ineligible Institution” has the meaning set forth in Section 11.04(b) hereof.

“Initial Advance” means the first Advance made in accordance with the terms hereof.

“Initial Party Agreement” means the Initial Party Agreement of even date herewith executed by and among the Consortium, Facility Lessee, Borrower and Collateral Agent.

“Interest Balancing Deposit” has the meaning set forth in Section 2.06(b) hereof.

“Interest Payment Date” means for each of the Senior First Lien Loans and Senior Second Lien Loans, the first (1st) day of each calendar month, (a) during the period commencing on the first such date to occur after the Closing Date and ending on and including 1st day of the calendar month first preceding the Facility Substantial Completion Date and (b) during the period commencing on the first (1st) day of the fourth full calendar month following the Facility Substantial Completion Date and ending on and including the Maturity Date of such Loan.
“**Interest Period**” means with respect to any Advance, the period commencing on the date of such Advance and ending on the last day of the calendar month of such Advance provided, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day.

“**IRS**” means the United States Internal Revenue Service.

“**JPMorgan**” has the meaning set forth in the preamble.

“**Land**” has the meaning set forth in the recitals.

“**Land Acquisition Costs**” means the “Purchase Price” payable under Section 2 the Contract of Sale and the additional consideration payable under Section 2(b) of the Contract of Sale.

“**Leasehold Mortgage**” means the Leasehold Mortgage, Security Agreement and Assignment of Leases and Rents of even date herewith executed by the Facility Lessee in favor of Borrower, and securing all of Facility Lessee’s obligations under the Facility Lease, Facility Lessee Loan and the other Project Documents and Loan Documents to which it is a party, as amended or otherwise modified from time to time.

“**Legal Requirements**” means, with respect to any Person, any and all judicial decisions, statutes, rulings, directions, rules, regulations, permits, certificates or ordinances of any Governmental Authority, including, without limitation, all Environmental Laws, in any way applicable to such Person or to its property, and, specifically in reference to Borrower, in any way applicable to Borrower or the Facility, including, without limitation, the ownership, division, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof.

“**Lender Reply Period**” has the meaning set forth in Section 10.09 hereof.

“**Lenders**” means Senior First Lien Lenders, Senior Second Lien Lenders and Subordinated Lenders.

“**Lien**” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“**Lien Law**” has the meaning set forth in Section 3.12 hereof.

“**Line Item**” has the meaning set forth in Section 2.08 hereof.

* To be synched with payment of Rent under the Facility Lease.
“Loan” or “Loans” means, with respect to any Lender(s), any loans made by such Lender(s) pursuant to this Agreement (or any conversion or continuation thereof).

“Loan Collateral” means, collectively, the Borrower Collateral and the Borrower Member Collateral.

“Loan Documents” means this Agreement, the Notes, the Project Loan Mortgage, the Collateral Account Pledge Agreement, the Borrower Member Pledge Agreement, the Recourse Carve-Out Guaranty (Principals), the Recourse Carve-Out Guaranty (Consortium), the Recourse Carve-Out Judgment Guaranty, the Primary Completion Guaranty, the Secondary Completion Guaranty, the Initial Party Agreement, the Project Completion Agreement, the Environmental Indemnity Agreement, the Agreement Among Lenders, the Assignments and Consents, the Building Loan Agreement, the Building Loan Mortgage, the Other Assignments of Leases and Consent and the Building Loan Notes and any and all other documents now or hereafter executed by Borrower, any Guarantor or any other guarantor of the Obligations or any portion thereof evidencing, guarantying, securing or otherwise pertaining to the Obligations.

“Loan Party” means Borrower, each Guarantor, the Facility Lessee, the Borrower Managing Member, the Borrower Non-Managing Members and the Borrower Profit Participant.

“Make-Whole Fee” means, in connection with any prepayment principal or reduction in undrawn Commitment of any Senior First Lien Loan (other than to the Proton System Supplier in its capacity as a Senior First Lien Lender or any successor or assignee in such capacity) and Senior Second Lien Loan pursuant to Section 3.06, an amount equal to the sum of (A) in the case of any reduction in undrawn Commitment (other than a reduction after Substantial Completion of the Facility), the product of (1) 3.0% and (2) the reduction in undrawn Commitment of such Senior First Lien Lender or Senior Second Lien Lender, as the case may be, and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such prepayment to and including the Make-Whole Fee End Date, and the denominator of which is 360; and (B) in the case of prepayment of principal, the product of (1) the applicable Interest Rate pursuant to Section 3.04(a) and (2) the principal amount of such Senior First Lien Loan or Senior Second Lien Loan, as the case may be, that is being prepaid, and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such prepayment to and including the Make-Whole Fee End Date, and the denominator of which is 360. For the avoidance of doubt, no Make-Whole Fee is payable with respect to the Subordinated Loans.

“Make-Whole Fee End Date” means the fifth (5th) anniversary of the Closing Date.

“Material Adverse Effect” means any event, development or circumstance after the date hereof that materially impairs the ability of Borrower to perform its material Obligations under the Loan Documents (including events that jeopardize the development and/or the construction of the Improvements, the use, operation, or value of the Facility or on the validity or enforceability of any of the Loan Documents, or the rights and remedies of Lender thereunder or Borrower’s ability to perform its Obligations under the Loan Documents. Borrower acknowledges that a fact, event or circumstance that exists as of the date hereof that is not currently a Material Adverse Effect may, in the future, constitute a Material Adverse Effect upon
the occurrence of further adverse facts or circumstances (e.g., a pending litigation action pertaining to the Facility may, following future adverse procedural or substantive trial developments, become a Material Adverse Effect).

“Material Default ” means a payment Default under either of Sections 8.01(a) or (b) that persists for more than 30 days; a Default under Sections 8.01(r); or any other Default which, if not cured within a reasonable time, is likely to cause a Material Adverse Effect.

“Maturity Date” means (i) for the Senior First Lien Loans, July 15, 2021, (ii) for the Senior Second Lien Loans, January 15, 2022 and (iii) for the Subordinated Loans January 15, 2022.

“Maximum Rate” has the meaning set forth in Section 11.12 hereof.

“Mortgage” or “Project Loan Mortgage” means the Project Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith executed by Borrower in favor of Collateral Agent, for the benefit of the Secured Parties, as amended or otherwise modified from time to time.

“Mortgages” means the Building Loan Mortgage, the Project Loan Mortgage and the Leasehold Mortgage.

“Mortgaged Property” means all right, title and interest of Borrower in and to (i) the Facility, subject to the lien of the Building Loan Mortgage and the Project Loan Mortgage and (ii) the lien of the Leasehold Mortgage, as assigned to the Collateral Agent pursuant to the Assignment of Leasehold Mortgage and Consent.

“Net Casualty Proceeds” has the meaning set forth in Section 7.01(g)(ii) hereof.

“Net Condemnation Proceeds” has the meaning set forth in Section 7.02 hereof.

“Non-Defaulting Lender” means any Lender, as determined by Administrative Agent, that is not a Defaulting Lender.

“Non-Interest Balancing Deposit” has the meaning set forth in Section 2.06(b) hereof.

“Notes” means, collectively, the Senior First Lien Notes, the Senior Second Lien Notes and the Subordinated Notes.

“Obligations” means all unpaid principal of and accrued and unpaid interest on the Loans, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other indebtedness, liabilities, or obligations of Borrower to the Lenders or to any Lender, Administrative Agent, Collateral Agent, or any indemnified party arising under the Loan Documents, whether before or after the occurrence of a Bankruptcy Event with respect to Borrower and including any post-petition interest and funding losses, whether or not allowed or allowable in whole or in part as a claim in any proceeding arising in connection with such an event.
“OFAC” means Office of Foreign Assets Control of the United States Department of the Treasury.

“Operating Costs” means the costs and expenses for the operation and maintenance of the Facility.


“Operator Financing Statement” means the UCC financing statement covering the security interests in personal property granted by Operator to Facility Lessee and assigned to Borrower and further assigned to Collateral Agent for the benefit of the Secured Parties, in the Loan Documents for filing with the Secretary of State of the State of New York.

“Other Assignments of Leases and Consent” means each “Assignment of Leases and Consent” as defined in the Building Loan Agreement.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.11(b) hereof).

“Outside Improvements Substantial Completion Date” means, with respect to the Improvements, the 36 month anniversary of the Closing Date, as extended on account of Force Majeure Causes (up to a maximum of 90 days) or such other date consented to in writing by Administrative Agent pursuant to Section 4.02(a).

“Outside Facility Substantial Completion Date” means, with respect to the Facility, the 48 month anniversary of the Closing Date, as extended on account of Force Majeure Causes (up to a maximum of 90 days) or such other date consented to in writing by Administrative Agent pursuant to Section 4.02(a).

“Participant” has the meaning set forth in Section 11.04(c)(i) hereof.

“Participant Register” has the meaning set forth in Section 11.04(c)(i) hereof.

“Permits” means all permits, licenses, certificates and approvals now or hereafter issued to Borrower for the construction and operation of the Improvements.
“Permitted Encumbrances” means (a) Liens and security interests granted pursuant to the Loan Documents, (b) the items set forth on Schedule B of the Title Policy, (c) customary easements entered into by Borrower in connection with the development and operation of the Facility which Administrative Agent shall have consented to in writing if it has determined that such would have no Material Adverse Effect, and (d) documents required to be recorded by applicable law which have no Material Adverse Effect and consented to in writing by Administrative Agent.

“Permitted Indebtedness” means (i) the Obligations, (ii) the Facility Lessee Reverse Loan, and (iii) subordinated, unsecured loans made by a member or Borrower Profit Participant to Borrower in connection with capital calls under the Borrower’s Limited Liability Company Agreement or the agreement between Borrower Managing Member and Borrower Profit Participant, which loans shall be subordinated pursuant to terms and conditions set forth in a subordination agreement in form and substance satisfactory to the Administrative Agent.

“Permitted Transfer” means any of the following (a) with respect to the member interests of each Principal in M&M Proton I Investors, LLC, (i) any transfer from one Principal to the other Principal, or (ii) transfers by a Principal for estate planning purposes to family members (who are at least 21 years of age) or to a trust provided that in all events control of such member interest is retained by such Principal, (b) the lien created by the Borrower Member Pledge Agreement or any transfer pursuant thereto, (c) any transfer by M&M Proton I Investors, LLC of all its interests in Borrower to any Lender, to Facility Lessee or to or any nominee or designee of the foregoing pursuant to the Project Completion Agreement, or (d) any transfer of an interest in Borrower to a Person by or to Borrower Profit Participant or its transferee pursuant to the terms of the Operating Agreement of Borrower or pursuant to the Equity Participation Agreement between M&M Proton I Investors, LLC and Borrower Profit Participant, subject, however, to satisfaction of the following conditions:

(A) in the case of any transfer described in clause (d), prior to the earlier of the payment in full of the Senior Lien Notes and the “Loan Discharge Date” (as such term is defined in the Collateral Account Pledge Agreement), (i) Borrower Profit Participant and any Controlled Subsidiary shall at all times continue to own not less than 51% of and control over the rights afforded to the Borrower Profit Participant interest or direct “Company Equity” (such quoted term and all quoted terms used in this provision are defined in the Equity Participation Agreement) interest in Borrower if Borrower Profit Participant elects to convert its “Participation Rights” into Company Equity, and (ii) in the event that Borrower Profit Participant elects to remove MM Proton I Investors, LLC (or any successor thereto) as “Managing Member” of Borrower and to permit another member of Borrower to be the Managing Member (the “Successor Managing Member”) or to appoint a third party as a non-member manager of Borrower (a “Non-Member Manager”), such Successor Managing Member or such Non-Member Manager, as the case may be, and the terms of the agreement setting forth the Non-Member Manager’s engagement and duties if applicable, shall be subject to the prior written approval of Administrative Agent, not to be unreasonably withheld, conditioned or delayed, provided that notwithstanding anything herein to the contrary, nothing herein shall prohibit or restrict any sale or other transfer of Borrower Profit Participant interest or other equity.
interests in Borrower by Borrower Profit Participant to the extent required or requested by any Governmental Authority or to any Controlled Subsidiary;

(B) prior to the Facility Substantial Completion Date and for avoidance of doubt, MM Proton Investors I, LLC shall not be entitled to exercise any “Tag Along Rights” provided for in the Equity Participation Agreement;

(C) none of the “FF Holder Loans” or “Priority Loans” may be assigned, transferred or otherwise disposed of separately and independent of any permitted transfer of any Company Equity interest, “Participation Rights” or “Synthetic Rights”; and

(D) under no circumstances may Managing Member, Principals or any Affiliate of either acquire any Synthetic Rights under the Equity Participation Agreement without the prior written approval of Administrative Agent.

As used herein, “Controlled Subsidiaries” means any Subsidiary of The Goldman Sachs Group, Inc., a Delaware corporation.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan Assets” means the assets of an employee benefit plan within the meaning of 29 C.F.R. 2510.3-101.

“Plans and Specifications” means the final plans and specifications and working drawings with respect to the Improvements accepted by Administrative Agent, and all applicable Governmental Authorities, as modified and supplemented from time to time in accordance with the terms and provisions of this Agreement.

“Primary Completion Guaranty” means that Primary Completion Guaranty of even date herewith executed by the Principals in favor Collateral Agent, as amended or otherwise modified from time to time.

“Prime Rate” means the rate of interest per annum publicly announced from time to time by JPMorgan, as its prime rate; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective. The Prime Rate is a reference rate and is not necessarily the lowest rate.

“Principals” means [****] * and [****].

“Project Budget” means the budget setting forth a Line Item and Cost Grouping breakdown of all Project Costs and all relevant assumptions, a copy of which is attached as Exhibit B hereto.

*Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
“Project Completion Agreement” means that certain Project Completion Agreement, dated the Closing Date, among Collateral Agent, the Principals, Borrower and Facility Lessee regarding the funding of cost overruns and drawing under the Primary Completion Guaranty and the Secondary Completion Guaranty.


“Project Documents” means the EDC Deed, the Facility Lease, the Sublease, the Leasehold Mortgage, the Construction Contract, the Architectural Services Agreement (Construction Administration), the Proton System Purchase Agreement, the Proton System Maintenance and Services Agreement, the Administrative Services Agreement, the Facility Lessee Operating Agreement and the Development Agreement and any other agreement relating to the ownership, financing, development or operation of the Facility to which Borrower or Facility Lessee is a party or beneficiary, whether now existing or hereafter arising; provided, however, that Project Documents shall not include the Loan Documents.

“Project Party” means Contractor, Architect, Proton System Supplier, Operator, Consortium and Developer.

“Property” means, collectively, the Land, the Improvements now or hereafter erected thereon, together with all rights pertaining to such property and Improvements.

“Proton System” means “Varian Trade Fixtures” as defined in the Facility Lease and includes the proton therapy equipment and other equipment, systems and materials ancillary thereto, for four treatment rooms, delivered to and installed in the Improvements, pursuant to the Proton System Purchase Agreement.

“Proton System Balancing Deposit” has the meaning set forth in Section 2.06(b) hereof.

“Proton System Costs” means all amounts payable to Proton System Supplier pursuant to the Proton System Purchase Agreement.

“Proton System Operations and Maintenance Agreement” means that certain Proton System Operations and Maintenance Agreement, dated as of even date herewith, by and between Facility Lessee and Proton System Supplier, providing for the maintenance, servicing, repair and replacement of the Proton System.

“Proton System Purchase Agreement” means that certain Proton System Purchase Agreement, dated as of even date herewith, by and between Facility Lessee, Borrower and Proton System Supplier, for the design, engineering, manufacture, installation and commissioning of the Proton System, together with all exhibits, schedules and attachments thereto, including the Building Interface Document.

“Proton System Supplier” means Varian Medical Systems, Inc.

“Punch List Items” means, collectively, minor or insubstantial details of construction, decoration, mechanical adjustment or installation, which do not hinder or impede a certificate of
completion to be issued by the appropriate Governmental Authority or the use, operation or maintenance of the Facility or the ability to obtain a certificate of completion or a permanent certificate of occupancy with respect thereto as determined by Administrative Agent.

“Qualified Financial Institution” means a financial institution with a long term corporate debt rating of at least “A” from Standard and Poor’s Rating Group or a comparable rating by a rating agency acceptable to Administrative Agent.

“Recipient” means (a) Administrative Agent, (b) Collateral Agent and (c) any Lender, as applicable.

“Recourse Carve-Out Guaranty (Consortium)” means that certain Member Guaranty of even date herewith executed by each member of the Consortium in favor of Collateral Agent, as amended or otherwise modified from time to time.

“Recourse Carve-Out Guaranty (Principals)” means that certain Bad Boy Guaranty (****) of even date herewith executed by the Principals, in favor of Collateral Agent, as amended or otherwise modified from time to time.

“Recourse Carve-Out Judgment Guaranty” means that certain Parent Guaranty (Judgment) of even date herewith executed by the parent of each hospital member of the Consortium in favor of Collateral Agent, as amended or otherwise modified from time to time.

“Register” has the meaning set forth in Section 11.04(b)(iv) hereof.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“Report” has the meaning set forth in Section 4.16(a) hereof.

“Required Lenders” means Lenders constituting Required Senior First Lien Lenders and Required Second Lien Lenders, provided that after the occurrence and during the continuance of a Default or Unmatured Default, “Required Lenders” shall have the meaning set forth in the Agreement Among Lenders.

“Required Senior First Lien Lenders” means Senior First Lien Lenders (other than Defaulting Lenders) in the aggregate having at least 66 2/3% of the Aggregate Senior First Lien Loan Commitment or, if the Aggregate Senior First Lien Loan Commitment has been terminated, Senior First Lien Lenders in the aggregate holding at least 66 2/3% of the aggregate unpaid principal amount of the outstanding Advances by Senior First Lien Holders.

“Required Senior Second Lien Lenders” means Senior Second Lien Lenders (other than Defaulting Lenders) in the aggregate having at least 66 2/3% of the Aggregate Senior
Second Lien Loan Commitment or, if the Aggregate Senior Second Lien Loan Commitment has been terminated, Senior Second Lien Lenders in the aggregate holding at least 66 2/3% of the aggregate unpaid principal amount of the outstanding Advances by Senior Second Lien Holders.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, Sudan and Syria).

“Sanctions” means economic or financial sanctions or trade embargoes imposed by any order by the executive branch of the U.S. government or by any sanctions program administered or enforced from time to time by the U.S. government, including those administered by OFAC or the U.S. Department of State.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, or (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

“Secondary Completion Guaranty” means that certain Secondary Completion Guaranty of even date herewith executed by Facility Lessee in favor of Collateral Agent, as amended or otherwise modified from time to time.

“Secured Parties” means the Administrative Agent, the Lenders and the Collateral Agent.

“Security Filings” means the following filings, or commitments to effect filings, on or before the Closing Date:

1. The final pro forma by the Title Company to issue the Title Policy in all respects satisfactory to the Administrative Agent, or the Title Policy issued by the Title Company, and commitment to promptly effect the following filings (or memoranda), in the order listed, in the appropriate real property records of New York City:
   a. the EDC Deed;
   b. a memorandum of Facility Lease;
   c. a memorandum of Sublease;
   d. the Facility Lease;
   e. the Leasehold Mortgage;
   f. the Assignment of Leasehold Mortgage and Consent;
   g. the Building Loan Mortgage; and
h. the Project Loan Mortgage;

2. The Borrower Financing Statement;

3. The Facility Lessee Financing Statement;

4. The Operator Financing Statement; and

5. The Borrower Member Financing Statement.

“Senior First Lien Lenders” means the Persons listed on Schedule 1.01 as Senior First Lien Lenders and any other Person that shall have become a party hereto as a Senior First Lien Lender pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Senior First Lien Loan” means any Loan made by a Senior First Lien Lender pursuant to Section 2.01(b)(i) hereof.

“Senior First Lien Notes” means the Promissory Notes executed by Borrower in favor of each of the Senior First Lien Lenders, substantially in the form of Exhibit C-1 hereto, as amended or otherwise modified from time to time.

“Senior Second Lien Lender” means each of the Persons listed on Schedule 1.01 as a Senior Second Lien Lender and any other Person that shall have become a party hereto as a Senior Second Lien Lender pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Senior Second Lien Loan” means any Loan made by a Senior Second Lien Lender pursuant to Section 2.01(b)(ii) hereof.

“Senior Second Lien Notes” means each Promissory Note executed by Borrower in favor of a Senior Second Lien Lender, substantially in the form of Exhibit C-2 hereto, as amended or otherwise modified from time to time.

“SFIP” has the meaning set forth in Section 7.01(a)(vi) hereof.

“Soft Costs” means those costs associated with the development, construction, marketing, leasing, operation and maintenance of the Improvements which are not Land Acquisition Costs or Building Costs, including, without limitation, the Facility Lessee Loan, repayment of the Facility Lessee Reverse Loan in respect of proceeds thereof used to pay Soft Costs and Land Acquisition Costs, the Developer Fee, architectural and engineering fees, consultant fees, professional fees, marketing fees and expenses, real estate taxes, insurance and bonding costs, interest and financing fees and any other items identified as “Soft Costs” in the Project Budget.

“Sublease” means certain Sublease, dated as of even date herewith, between Facility Lessee, as sublessor, and Operator, as sublessee, of the Facility.
“Subordinated Lenders” means the Persons listed on Schedule 1.01 as Subordinated Lenders and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Subordinated Loan” means any Loan made by a Subordinated Lender pursuant to Section 2.01 hereof.

“Subordinated Notes” means the Promissory Notes executed by Borrower in favor of each of the Subordinated Lenders, substantially in the form of Exhibit C-3 hereto.

“Substantially Complete”, “Substantially Completed” or “Substantial Completion” means, (a) with respect to the Improvements, the “Land and Building Improvements Substantial Completion” has occurred with respect to the “Land and Building Improvements”, as each such term is defined in the Work Letter, and (b) with respect to the Facility, “Proton Treatment Room Substantial Completion” has occurred with respect to all four “Proton Treatment Rooms”, as such term is defined in the Work Letter.

“Supplemental Capital Contribution Obligation” means the obligation of Consortium to fund up to $25,000,000 in support, inter alia, of the Secondary Completion Guaranty and $12,000,000 in working capital for Facility Lessee pursuant to the Facility Lessee Operating Agreement.

“Survey” has the meaning set forth in Section 2.03(c)(iii) hereof.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Title Company” means, collectively, Chicago Title Insurance Company, Fidelity National Title Insurance Company, and First American Title Insurance Company, with each issuing a Title Policy for 1/3 of the total commitment on a coinsurance basis.

“Title Policy” means, with respect to each Title Company, in respect of its commitment:

1. with respect to the Building Loan Mortgage an ALTA Lender’s Policy of Title Insurance in form and substance satisfactory to Administrative Agent issued by the Title Company in the amount of the Aggregate Loan Commitment under this Agreement insuring the Building Loan Mortgage as a first priority lien on the Facility, containing such endorsements as Administrative Agent may request, excepting only such items as shall be acceptable to Administrative Agent,

2. with respect to the Project Loan Mortgage an ALTA Lender’s Policy of Title Insurance in form and substance satisfactory to Administrative Agent issued by the Title Company in the amount of the Aggregate Loan Commitment under the Project Loan insuring the Project Loan Mortgage as a second priority lien on the Facility, containing such endorsements as Administrative Agent may request, excepting only such items as shall be acceptable to Administrative Agent, and
3. with respect to the Leasehold Mortgage an ALTA Lender’s Policy of Title Insurance in form and substance satisfactory to Collateral Agent issued by the Title Company in the amount of the Aggregate Loan Commitment under this Agreement and the Project Loan Agreement insuring the Leasehold Mortgage as a first priority lien on the leasehold interests of Facility Lessee in Facility, containing such endorsements as Administrative Agent may request, excepting only such items as shall be acceptable to Administrative Agent.

“Unmatured Default” means the occurrence of an event which with notice or lapse of time or both would constitute a Default.

“U.S. Person” means a “United States person” within the meaning of section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 3.09(f)(ii)(B)(3) hereof.

“Work Letter” means the Work Letter between Borrower and Facility Lessee, attached as Exhibit B to the Facility Lease, which provides for the responsibilities, as between Borrower and Facility Lessee, for the engineering, procurement and construction of the Improvements and installation of the Proton System.

1.02 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any right or interest in or to assets and properties of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

1.03 Accounting and Other Terms. All terms used in this Agreement which are defined in Article 8 or Article 9 of the Uniform Commercial Code as in effect from time to time in the State of New York (the “Uniform Commercial Code” or the “UCC”) and which are not otherwise defined herein shall have the same meanings herein as set forth therein, provided that terms used herein which are defined in the Uniform Commercial Code as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as any Agent may otherwise determine. Unless otherwise indicated herein, all references to time of day refer to Eastern Standard Time or Eastern daylight saving time, as in effect in New York City on such day.
ARTICLE II
CONDITIONS TO DISBURSEMENTS

2.01 Right to Advances, Generally.

(a) Each Lender severally agrees, on the terms and conditions set forth in this Agreement, to make Loans to Borrower from time to time in amounts not to exceed in the aggregate the amount of its Commitment. Each Lender shall make Advances to pay accrued interest on the Senior First Lien Loans and Senior Second Lien Loans, as provided in Section 2.08. In addition, each Lender shall make Advances pursuant a request for an Advance by Borrower pursuant to Section 3.02, and satisfaction of the conditions provided herein.

(b) Borrower acknowledges that the aggregate Commitment of the Lenders under this Agreement and the Project Loan Agreement shall not exceed (i) in the case of the Senior First Lien Lenders, the sum of the Aggregate Senior First Lien Commitment hereunder and under the Project Loan Agreement, (ii) in the case of the Senior Second Lien Lenders, the sum of the Aggregate Senior Second Lien Commitment hereunder and under the Project Loan Agreement, and (iii) in the case of the Subordinated Lender, the sum of the Aggregate Subordinated Loan Commitment hereunder and under the Project Loan Agreement. At Borrower’s request, the Lenders agree to consider adjustments to their commitment under this Agreement and the Project Loan Agreement so that the previous sentence remains correct and the relative priorities of the Aggregate Senior First Lien Loan Commitment and the Aggregate Senior Second Lien Loan Commitment under this Agreement or the Project Loan Agreement do not change; provided that in no event shall any Lender be obligated to make any adjustment in their commitment under this Agreement.

(c) Each Advance hereunder, including Advances to pay interest on the Senior First Lien Loans and Senior Second Lien Loan pursuant to Section 2.08, hereunder shall consist of Loans solely from the Subordinated Lender until such time as the Subordinated Lender shall have fully funded the Aggregate Subordinated Loan Commitment hereunder and the Aggregated Subordinated Loan Commitment under the Building Loan Agreement and, thereafter, of Senior First Lien Loans and Senior Second Lien Loans ratably in proportion to the ratio that the Aggregate Senior First Lien Loan Commitment bears to the Aggregate Senior Second Lien Loan Commitment, with (i) such Senior First Lien Loans made by the Senior First Lien Lenders ratably in proportion to their Applicable Percentage, and (ii) such Senior Second Lien Loans made by the Senior Second Lien Lenders ratably in proportion to their Applicable Percentage.

(d) No Lender shall be responsible for the failure of any other Lender to perform its obligations to make Loans hereunder, and the Commitment of any Lender shall not be increased or decreased as a result of the failure by any other Lender to perform its obligation to make Loans hereunder.

(e) Borrower agrees to cause the proceeds of each Advance to be applied for the Soft Costs and Proton System Costs specified in the applicable Draw Package and approved for disbursement and for no other purposes. No Advance shall be applied by Borrower to reimburse itself for any costs previously funded with or credited to Borrower’s Initial Equity Requirement or costs funded with any Balancing Deposit.
Notwithstanding any provision of this Agreement to the contrary, the Commitments of each Lender shall terminate if the Initial Advance is not made on or before September 30, 2015, and unless earlier terminated pursuant to the terms hereof, shall expire on the earlier of (i) the making of the final Advance permitted by the next sentence, and (ii) Outside Facility Substantial Completion Date. After funding of the last Advance pursuant to Section 2.10 due in connection with Completion, the Borrower may request, subject to available Commitment, two additional Advances under this Agreement to fund the final installment of the Developer Fee and the final advance under the Facility Lessee Loan Agreement to fund the final installment due the Proton System Supplier, and after funding of the second such Advance, all remaining and unfunded Commitments of the Lenders shall terminate.

2.02 Closing Date Transactions. On the Closing Date, the following transaction shall occur:

(a) Borrower, the Lenders, Collateral Agent and Administrative Agent shall enter into each of the Loan Documents to which it is a party;

(b) Borrower, Facility Lessee and each of the Project Parties shall enter into each of the Project Documents to which it is a party;

(c) The Principals shall have contributed to Borrower cash equity in an amount not less than Borrower’s Initial Equity Requirement and such funds shall have either (i) been disbursed in payment of Project Costs, as evidenced to the satisfaction of Administrative Agent, or (ii) deposited with Collateral Agent for disbursement in payment of Project Costs;

(d) Facility Lessee shall make the Facility Lessee Project Cost Advance to Collateral Agent;

(e) Lenders shall make the Initial Advance hereunder and under the Other Loan Documents, if applicable, to Collateral Agent;

(f) EDC shall have conveyed the Land to Borrower pursuant to the EDC Deed and Collateral Agent shall then disburse to EDC the balance of the monies due to the seller under the Contract of Sale;

(g) Borrower shall have leased the Property to Facility Lessee pursuant to the Facility Lease;

(h) Collateral Agent shall make, as directed by Borrower, such other payments as are then due from the proceeds of the Initial Advance and Facility Lessee Project Cost Advance in accordance with this Agreement; and

(i) Borrower shall pay to Administrative Agent and each Lender all fees and reimbursement of expenses due hereunder.

2.03 Conditions to Closing and Initial Advance. Borrower agrees that, in addition to all other conditions set forth herein, the making of the Initial Advance is conditioned upon satisfaction by Administrative Agent and the Lenders that the following conditions precedent
have been satisfied in full (i) the consummation on the Closing Date of each of the transactions described in Section 2.02 hereof and (ii) the fulfillment of each of the conditions described in this Section 2.03 on the Closing Date, subject, however, to the right of Administrative Agent to waive any one or more of such conditions in whole or in part:

(a) Loan Documents and Certain Third Party Documents. Administrative Agent shall have received on or prior to the date of the Initial Advance the following documents fully executed and in form and substance satisfactory to Administrative Agent, all of which shall be in full force and effect:

(i) the Notes (with originals delivered to the applicable Lender);
(ii) the Mortgage;
(iii) the Assignment of Leases and Consent;
(iv) the Building Loan Agreement;
(v) the Building Loan Notes;
(vi) the Building Loan Mortgage;
(vii) the Other Assignments of Leases and Consent;
(viii) the Facility Lease;
(ix) the Memorandum of Lease;
(x) the Sublease;
(xi) the Memorandum of Sublease.
(xii) the Facility Lessee Loan and Security Agreement;
(xiii) the Leasehold Mortgage;
(xiv) the Assignment of Leasehold Mortgage and Consent;
(xv) the Collateral Account Pledge Agreement:
(xvi) the Borrower Member Pledge Agreement (with the membership certificate duly endorsed and delivered to Collateral Agent);
(xvii) the Recourse Carve-Out Guaranty (Principals);
(xviii) the Recourse Carve-Out Guaranty (Consortium);
(xix) the Recourse Carve-Out Judgment Guaranty;

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(xx) the Primary Completion Guaranty;
(xxi) the Project Completion Agreement;
(xxii) the Secondary Completion Guaranty;
(xxiii) the Initial Party Agreement;
(xxiv) the Permanent Party Agreement;
(xxv) the Environmental Indemnity Agreement;
(xxvi) the Contract of Sale, together with the Assignment of Contract;
(xxvii) the EDC Deed;
(xxviii) the Borrower Estoppel;
(xxix) the Assignment of Architectural Services Agreement (Construction Administration) and Consent (attaching a copy of the Architectural Services Agreement (Construction Administration));
(xxx) Assignment of Architectural Services Agreement (Design) and Consent (attaching a copy of the Architectural Services Agreement (Design));
.xxxi) the Assignment of Construction Contract and Consent (attaching a copy of the Construction Contract);
(xxxii) the Assignment of Proton System Agreements and Consent (attaching a copy of the Proton System Purchase Agreement and Proton System Operations and Maintenance Agreement);
(xxxiii) the Assignment of Leases and Rents (Facility Lessee) and Consent;
(xxxiv) the Assignment of Facility Lessee Operating Agreement and Consent (attaching a copy of the Facility Lessee Operating Agreement);
(xxxv) the Borrower Financing Statement;
(xxxvi) the Facility Lessee Financing Statement;
(xxxvii) the Operator Financing Statement;
(xxxviii) the Development Agreement; and
(xxxix) the Assignment and Subordination of Development Agreement and Consent.

(b) Security Filings.
(i) Current UCC, tax, lien and judgment searches made in such places as Administrative Agent may specify, covering Borrower, Facility Lessee, Borrower Managing Member and Borrower Profit Participant and showing no filings relating to, or which could relate to, any of the Borrower Collateral, the Borrower Member Collateral or the Facility Lessee Collateral other than those made hereunder; and

(ii) All Security Filings shall have been made or, in the case of the Title Policy, Administrative Agent shall have received a final pro forma to issue the Title Policy or the issued Title Policy, in all respects satisfactory to the Administrative Agent, together with copies of all documentation evidencing exceptions raised therein.

(c) Additional Closing Deliveries. Administrative Agent shall have received the following on or before the date of the Initial Advance in form and substance satisfactory to Administrative Agent:

(i) Evidence of the insurance required under Section 7.01 hereof;

(ii) An ALTA survey of the Land certified in a manner acceptable to Administrative Agent and which includes an appropriate professional seal (the “Survey”);

(iii) An Appraisal, satisfactory to Administrative Agent;

(iv) With respect to each of (1) Borrower, (2) Facility Lessee, (3) each Guarantor (other than the hospital parent of each member of the Consortium), (4) the Borrower Managing Member, (5) the Borrower Profit Participant, (6) Contractor, (7) Architect, (8) Proton System Supplier, (9) Facility Lessee Manager, and (10) the Consortium, a certificate of a secretary or assistant secretary or comparable officer of such Person certifying as to (x) the organizational documents for such Person, (y) the authorizing resolutions of such Person and (z) incumbency and specimen signatures of signatories for such Person, together with (A) a copy of the organizational documents for such Person, each certified by the Secretary of State of the state of its formation as of a recent date, (B) certificates of good standing and authority to do business as a foreign entity, as applicable, as of a recent date for such Person from such Secretary of State and from the Secretary of State of any such foreign jurisdiction, as applicable;

(v) A copy of the Contract of Sale, together with all Exhibits thereto, and the related closing statement, certified as true, correct and complete by Borrower;

(vi) Evidence indicating whether the Land is located within a one hundred year flood plain or identified as a special flood hazard area as defined by the Federal Emergency Management Agency, and, if so, a flood notification form signed by Borrower and evidence that flood insurance is in place for the building and contents, all in form and substance satisfactory to Administrative Agent;

(vii) An environmental report or reports with respect to the Land prepared by an environmental consultant acceptable to Administrative Agent and which report or
reports indicate that there has been no change in the condition of the Land from that described in the Report;

(viii) Evidence indicating compliance by the Improvements with applicable zoning requirements (without requirement for a variance) and the Contract of Sale, including an opinion of counsel regarding zoning in form and scope satisfactory to Administrative Agent;

(ix) If requested by the Administrative Agent, an Architect’s Certificate;

(x) Evidence that all utilities and municipal services required for the construction and operation of the Facility are available at the Property;

(xi) The most recent available financial statements of Borrower, Facility Lessee and each Principal in the form of financial statement required pursuant to this Agreement;

(xii) A Certification of Non-Foreign Status;

(xiii) A signed IRS Form W-8 or W-9 as applicable;

(xiv) All notices required by any Governmental Authority or by any applicable Legal Requirement to be filed prior to commencement of construction of the Improvements shall have been filed;

(xv) Administrative Agent, in its reasonable discretion, shall have received and approved evidence of the quality of the Borrower’s project management team (experience and number of employees and shall be satisfied that the members of such team can reasonably be expected to remain on such team through the Completion of the Facility), it being agreed that the list of individuals set forth on Exhibit J has been approved by Administrative Agent;

(xvi) Borrower shall have caused the Title Company or some other escrow agent reasonably acceptable to Administrative Agent to enter into a disbursement agreement reasonably acceptable to Administrative Agent by and among Borrower, Administrative Agent and the Title Company (or some other escrow agent reasonably acceptable to Administrative Agent);

(xvii) The Zoning Lot Development Agreement relating to the Property;

(xviii) Such other information and documents as Administrative Agent may require; and

(xix) there shall not have occurred any change, event or condition after the Closing Date that had or is reasonably likely to have a Material Adverse Effect.
(d) **Construction Documents.** To the extent applicable, Administrative Agent shall have received the following on or before the date of the Initial Advance in form and substance satisfactory to Administrative Agent:

(i) The Plans and Specifications;

(ii) A plan and cost review report from the Independent Engineer;

(iii) The Construction Schedule;

(iv) Sub-guard insurance in respect of each subcontractor equal to 100% of the value of the subcontract (or if not covered by sub-guard insurance, original payment and performance bonds covering such subcontract), in each case from insurance and bonding companies satisfactory to Administrative Agent, containing a dual obligee rider naming Collateral Agent as an obligee, for the benefit of the Secured Parties and a financial interests endorsement for sub-guard insurance;

(v) Copies of all permits, certificates, licenses and approvals required under all applicable Legal Requirements for the construction of the Improvements and installation of the Proton System, to the extent required and available as of such Initial Advance;

(vi) A copy of the executed Construction Contract and, to the extent necessary as determined by Administrative Agent in its reasonable discretion, a schedule, certified by Borrower showing (A) all subcontracts relating to the Construction Contract awarded as of the date of the Initial Advance, including names, types of work, subcontract amounts and percentage retainage provided in said subcontracts, (B) the amount of general conditions and an estimate of value for each subcontract not awarded as of such date, and (C) a total overall schedule of values;

(vii) Copies of such financial statements of Contractor as Administrative Agent may reasonably require, including balance sheets and profit and loss statements;

(viii) A copy of the standard form of subcontract to be used by Contractor, which form shall not prohibit an assignment of the Construction Contract to Administrative Agent or require the Contractor’s consent thereto and shall be used for all subcontracts relating to the Construction Contract;

(ix) A copy of the executed Proton System Purchase Agreement and, to the extent necessary as determined by Administrative Agent in its reasonable discretion, a schedule showing, if any, all subcontracts awarded as of the date of the Initial Advance, including names, types of work, subcontract amounts and percentage retainage provided in said subcontract;

(x) With respect to any subcontractor who is not subject to the Contractor’s sub-guard insurance program, a copy of the financial statements of such subcontractor, including balance sheets and profit and loss statements;
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(xii) A copy of the standard form of subcontract to be used by Proton System Supplier, which form shall not prohibit an assignment to Administrative Agent or require the Proton System Supplier’s consent thereto and shall be used for all subcontracts relating to the Proton System Purchase Agreement;

(xiii) A copy of the Building Interface Document, executed by both Contractor and Proton System Supplier;

(xiv) Intentionally Omitted;

(xv) Evidence that the proceeds of the Loans will be sufficient to cover all Project Costs reasonably anticipated to be incurred and to satisfy the Obligations of Borrower under this Agreement; and

(xvi) Such additional documents and information relating to the design and construction of the Improvements and installation of the Proton System as reasonably required by Administrative Agent.

(e) Fees and Expenses. All fees and reimbursement of expenses due Administrative Agent and the Lenders on the date of the Initial Advance (including, without limitation, Administrative Agent’s and each Lender’s attorneys’ fees and expenses) shall be paid prior to or out of the Initial Advance.

(f) Other Documents. Such other information, documents, certificates and opinions as Administrative Agent or any of the Lenders may reasonably require.

2.04 Conditions to All Advances.

Without limitation of any other provision of this Agreement, the making of each Advance, or the withdrawal of funds previously advanced and deposited into a Construction Account under the Collateral Account Pledge Agreement, is conditioned upon fulfillment of each of the conditions set forth in this Section 2.04, subject, however, in each case, to the right of Administrative Agent to waive any one or more of such conditions in whole or in part. Collateral Agent shall make the requested Advance within five (5) Business Days after satisfaction or waiver of such conditions.

(a) Draw Package. Administrative Agent shall have received the following in form and substance satisfactory to Administrative Agent (collectively, a “Draw Package”) at least 10 Business Days prior to the date of the requested Advance, which Draw Package shall be posted on an Electronic System accessible by the Lenders:

(i) a request in the form attached hereto as Exhibit I (a “Draw Request”) or as otherwise approved by Administrative Agent;
(ii) if applicable, as determined by Administrative Agent, a draw request certification from Proton System Supplier covering all or a portion of the requested Advance in a form acceptable to Administrative Agent (with Proton System Supplier’s sworn statement and application for payment attached thereto);

(iii) a list of the Softs Costs and/or Proton System Costs to be paid from the requested Advance and copies of invoices for each item of Soft Costs and/or Proton System Costs certified by Borrower that such costs is[are] in compliance with the Project Budget; and

(iv) additional documentation as reasonably requested by Administrative Agent.

(b) Prior Conditions Satisfied. All conditions precedent to the Initial Advance and any prior Advance (in the same manner in which they were satisfied for the Initial Advance or such prior Advance, as applicable, and without reimposing any one time requirement) shall continue to be satisfied as of the date of such subsequent Advance.

(c) Loan Documents. All Loan Documents shall be in full force and effect.

(d) No Damage. The Improvements shall not have been damaged by fire, explosion, accident, flood or other casualty, unless Administrative Agent shall have received insurance proceeds sufficient in the reasonable judgment of Administrative Agent (or Borrower shall have deposited with Administrative Agent such amount) to permit the Substantial Completion of the Facility to occur no later than the Outside Facility Substantial Completion Date.

(e) No Material Adverse Effect. No change, event or condition shall have occurred since the prior Advance that had or is reasonably likely to have a Material Adverse Effect.

(f) Financial Condition. Administrative Agent shall have received the financial statements of Borrower, Facility Lessee and each Principal required under Section 4.15 of this Agreement.

(g) Intentionally Omitted.

(h) Intentionally Omitted.

(i) Borrowing Request. Administrative Agent shall have received a Draw Package in accordance with the provisions of Section 2.04(a) hereof.

(j) Intentionally Omitted.

(k) Title Endorsements. Administrative Agent shall have received a commitment from the Title Company to issue a bring-down endorsement to the Title Policy in form and substance satisfactory to Administrative Agent, extending and increasing the coverage to include the date and the amount of the requested Advance, together with such other endorsements required by Administrative Agent to continue to insure the Lien of the Mortgage as a prior and paramount Lien on the Mortgaged Property subject only the Permitted Encumbrances and any
other matter approved by Administrative Agent in writing. Administrative Agent shall have also received any endorsement required by Section 4.02(b) hereof.

(i) Loans In Balance. The Loans shall be “in balance” as determined by Administrative Agent in accordance with Section 2.06 hereof.

(m) Insurance. All insurance required by Section 7.01 of this Agreement shall be in full force and effect.

(n) Certification Regarding Chattels. Administrative Agent shall have received a certification from the Title Company or other service satisfactory to Administrative Agent or counsel satisfactory to Administrative Agent (which shall be updated from time to time at Borrower’s expense upon request by Administrative Agent in connection with future Advances) that a search of the public records disclosed no significant or material changes since the Closing Date, including no judgment or tax liens affecting Borrower, the Principals or the Facility Lessee, the Mortgaged Property, or the Facility, and no conditional sales contracts, chattel mortgages, leases of personalty, financing statements (other than those in favor of Administrative Agent or permitted by the Facility Lease and/or Leasehold Mortgage) or title retention agreements which affect the Facility.

(o) Changes in Requirements. A written statement from Borrower to Administrative Agent detailing any change in special requirements of any Governmental Authority with respect to the Facility, known or contemplated by the Borrower, which have been or will be imposed by such Governmental Authority as a condition to the approval of the Facility or the construction thereof, together with an explanation of the manner in which Borrower intends to comply with such requirements;

(p) No Default or Unmatured Default. No Default or Unmatured Default shall have occurred and be continuing.

(q) Representations and Warranties. The representations and warranties made hereunder or under any of the other Loan Documents, or in any certificate or other document executed by Borrower, any other Loan Party or any Project Party and delivered to Administrative Agent pursuant to or in connection with this Agreement, shall be true and correct in all material respects as of the applicable Borrowing Date except to the extent any such representation or warranty is made as of a specified date, in which case such representation or warranty shall have been true and correct on and as of such specified date.

(r) Payment of Fees. Borrower shall have paid all fees and expenses required by this Agreement, to the extent then due and payable, including, without limitation, Administrative Agent’s and the Lenders’ reasonable attorneys’ fees and expenses.

(s) Lender Disbursements. Administrative Agent shall have received from each Lender such Lender’s pro rata share of such Advance.

Each Draw Package submitted by Borrower shall constitute a representation and warranty by Borrower that, except as otherwise specifically disclosed in such Draw Package and labeled as a “Disclosure” (a “Disclosure”): (i) to the best of Borrower’s knowledge, Borrower is in
compliance with all of the conditions to the applicable Advance set forth in this Agreement, (ii) all representations and warranties
made hereunder or under any of the Loan Documents, or in any certificate or other document executed by Borrower, each Guarantor,
or to the best of Borrower’s knowledge any other Loan Party or Project Party as the case may be, and delivered to Administrative
Agent pursuant to or in connection with this Agreement, are true and correct in all material respects as of the applicable Borrowing
Date except to the extent such representation and warranty is made as of a specified date, in which case such representation and
warranty shall have been true and correct on and as of such specified date, (iii) to the best of Borrower’s knowledge, no Default or
Unmatured Default exists as of the applicable Borrowing Date, (iv) Intentionally Omitted, (v) all costs for the payment of which the
Lenders have previously advanced funds have in fact been paid to the appropriate vendors and (vi) to the best of Borrower’s
knowledge, Borrower continues to be in compliance in all material respects with all of the terms, covenants and conditions contained
in this Agreement. If Administrative Agent elects to make an Advance notwithstanding matters which are the subject of a
Disclosure, the waiver of such matters shall be effective for that Advance only, and unless subsequently waived, such matters must
be corrected before the next Advance.

2.05 Disbursements.

(a) Generally. Administrative Agent will make such Loans available to Borrower by promptly crediting the amounts
so received, in like funds, to the Borrower Operating Account maintained with Collateral Agent, unless the Administrative Agent
determines to direct funds to the applicable Borrower Construction Account maintained with the Collateral Agent.

(b) Loan Disbursements. Borrower agrees to pay all fees and expenses of Collateral Agent charged in connection
with the performance of its duties under such Collateral Account Pledge Agreement. Advances deposited by or on behalf of the
Lenders into the Borrower Operating Account or to a Construction Account established by the Collateral Account Pledge Agreement
shall be deemed fully made to Borrower on the date of such deposit.

(c) Lessee Project Costs. The Facility Lessee Project Cost Advance, the repayment of the Facility Lessee Reverse
Loan and the proceeds of any advance by Borrower on the Facility Lessee Loan shall be deposited into the Facility Lessee
Construction Account pursuant to the provisions of the Collateral Account Pledge Agreement. Amounts deposited into the Facility
Lessee Construction Account established by the Collateral Account Pledge Agreement shall be deemed fully made to Facility Lessee
on the date of such deposit; and such amounts shall be disbursed by Collateral Agent directly to Proton System Supplier as directed
in the Draw Package.

(d) Monthly Advances; Minimum Amounts. Other than disbursements to pay interest on the Senior First Lien Loans
or interest on the Senior Second Lien Loans, Advances will not be made more frequently than monthly.

(e) Amounts of Advances. In no event shall any Advance exceed the full amount of Soft Costs and Proton System
Costs theretofore paid or incurred by Borrower through the date of the Draw Request for such Advance minus the aggregate amount
of any Advances previously
made by the Lenders. In no event shall any Advance, except the final Advance, be for an amount which is less than $250,000.

(f) **Intentionally Omitted.**

(g) **No Deemed Approval.** No Advance of the Loans by the Lenders shall be deemed to be an approval or acceptance by Administrative Agent or the Lenders of any work performed thereon or the materials furnished with respect thereto.

2.06 **Balancing.**

(a) **“In Balance” Determination.** Advances shall only be made at such times as the Loans are “in balance”. The Loans shall be deemed to be “in balance” only at such times as Administrative Agent determines (i) that (A) amounts available for disbursement under the Loan Documents for Project Costs (including from non-interest contingency items) other than interest on the Loans (determined after deducting the allocated amount of any Defaulting Lender’s Commitment) together with (B) available undisbursed Non-Interest Balancing Deposits, will be sufficient (giving effect to the expected timing of availability) to complete the Facility in accordance with the requirements of this Agreement and pay all Project Costs other than interest on the Loans as and when expected to be incurred through the Outside Facility Substantial Completion Date, (ii) that (A) the amount available for disbursement under the Loan Documents for interest on the Loans (determined after deducting the allocated amount of any Defaulting Lender’s Commitment) together with (B) available undisbursed Interest Balancing Deposits, will be sufficient to pay interest on the Loans through October 15, 2018 (or such earlier date, approved by Administrative Agent, by which Borrower reasonably anticipates the Facility Substantial Completion Date occurring), and (iii) that the amount on deposit in the Facility Lessee Construction Account, or available for deposit from the proceeds of repayment of the Facility Lessee Reverse Loan, the proceeds of the Facility Lessee Loan or funds due from Facility Lessee pursuant to the Facility Lease or the Proton System Supplier under the Proton System Purchase Agreement, will be sufficient to pay all Facility Lessee Project Costs, including amounts due or to be become due under the Proton System Purchase Agreement.

(b) **Balancing Deposits.** Within 10 days after written notice from Administrative Agent that the Loans are not “in balance,” and prior to any subsequent Advance, Borrower shall deposit or cause to be deposited sufficient funds with Collateral Agent to bring the Loans “in balance” as determined by Administrative Agent. Any amounts so deposited will be held by Collateral Agent in Construction Account – Project Loan under the Collateral Account Pledge Agreement. Any amounts so deposited to correct a deficiency described in Section 2.06(a)(i) or 2.06(a)(ii)(A) above (a “Non-Interest Balancing Deposit”) shall be disbursed for the payment of Project Costs (other than interest on the Loans) before any additional Advances are made for such Project Costs. Any amounts so deposited to correct a deficiency described in Section 2.06(a)(ii) above (an “Interest Balancing Deposit”) shall be disbursed for the payment of interest on the Loans before any additional Advances are made therefor. Any amounts so deposited to correct a deficiency described in Section 2.06(a)(iii) above (a “Proton System Balancing Deposit”) shall be held in the Facility Lessee Construction Account and disbursed for the payment of amounts due on the Proton System Purchase Agreement. Disbursements of Balancing Deposits shall be subject to the same conditions as would be applicable to an Advance.
hereunder. Upon the occurrence and during the continuance of a Default, Administrative Agent may apply all or any portion of any Borrower Balancing Deposit (including accrued interest thereon) to the payment of the Obligations or any Project Costs. Borrower shall have the right to deliver an irrevocable standby letter of credit to Administrative Agent in the amount of any required Balancing Deposit in lieu of depositing cash therefor so long as such letter of credit (i) is issued by a Qualified Financial Institution, (ii) permits draws upon delivery of sight drafts by Administrative Agent in order to facilitate the disbursements contemplated hereby in the same manner as if cash were deposited with Administrative Agent for the required Balancing Deposit, and (iii) is otherwise in form and substance satisfactory to Administrative Agent. In the event Administrative Agent makes a demand for a Balancing Deposit hereunder as a result of a casualty or condemnation, any insurance or condemnation proceeds held by Administrative Agent and available for disbursement for construction or reconstruction in accordance with Section 7.01(g) and Section 7.02 hereof (as applicable) hereof shall be credited against the Balancing Deposit required to be made hereunder and shall be treated in the same manner as a Balancing Deposit.

2.07 Advances to Pay Interest on Senior First Lien Loans and Senior Second Lien Loans.

(a) Borrower hereby authorizes the Lenders to make Advances on each Interest Payment Date occurring on or prior to the Facility Substantial Completion Date to pay accrued interest on the Senior First Lien Loans and the Senior Second Lien Loans. Administrative Agent shall advise each Lender of the total amount of accrued interest on the Senior First Lien Loans and Senior Second Lien Loans due on such Interest Payment Date and the amount each Lender is required to fund pursuant to Section 2.02(c). Upon receipt of such Advances, the Administrative Agent shall promptly disburse to each Senior First Lien Lender and Senior Second Lien Lender an amount equal to such accrued interest.

(b) Borrower’s authorization in Section 2.07(a) is irrevocable and no further direction, authorization or Draw Request shall be required for Lenders to make such Advances. The Lenders may make such Advances notwithstanding that a Default or Unmatured Default may have occurred under the terms of this Agreement or any other Loan Document.

(c) The portion of the Aggregate Senior First Lien Loan Commitment and Senior Second Lien Loan Commitment allocated in the Project Budget for interest on the Senior First Lien Loans and the Senior Second Lien Loans shall be held by the Senior First Lien Lenders and Senior Second Lien Lenders, as applicable, as an unfunded interest reserve. If the interest reserve is insufficient to pay in full interest due on the Senior First Lien Loans and the Senior Second Lien Loans, then such Advance shall be allocated first to interest due on the Senior First Lien Loans and second to interest due on the Senior Second Lien Loans. If funds are not available from the interest reserve to pay in full interest when due on the Senior First Lien Loans and the Senior Second Lien Loans, Borrower shall pay such shortfall from its own funds. Nothing in this provision shall prevent Borrower from paying interest on the Senior First Lien Loans and the Senior Second Lien Loans from its own funds. Cash flow from the Facility must be used to pay interest on the Senior First Lien Loans and the Senior Second Lien Loan before any Advances are made to pay such interest.

2.08 Project Budget.
(a) A budget setting forth the items of direct and indirect costs of all Project Costs is attached hereto as Exhibit B (as amended and modified from time to time with the approval of Administrative Agent, the “Project Budget”). Each such cost (a “Line Item”) shall be allocated to a grouping (a “Cost Grouping”). The Project Budget shall delineate those Project Costs that may be funded with the Loan proceeds (subject to satisfaction of all applicable conditions to Advances hereunder) being so indicated. The Project Budget shall contain a contingency for non-interest Project Costs and a reserve for interest. The Lenders shall not be obligated to disburse more than the amount shown in the Project Budget for any Cost Grouping.

(b) From time to time, Administrative Agent, or Borrower with the prior written approval of Administrative Agent in accordance herewith, may determine that modifications are necessary in the Project Budget because of actual or anticipated changes in the Project Costs, including the allocation of the non-interest contingency to the Project Costs. If, after due consultation and consideration of the views of Borrower and supporting documentation, Borrower and Administrative Agent do not agree on the changes, Administrative Agent’s reasonable determination shall control.

(c) If Borrower becomes aware of any change in the Project Costs that will increase a Cost Grouping reflected on the Project Budget, Borrower shall promptly notify Administrative Agent in writing, advise Administrative Agent of the source of funds for such increase (which may include funds from the Facility Lessee, the Proton System Supplier or the allocation of the non-interest contingency in the Project Budget or the reallocation of the interest reserve to non-interest contingency) and promptly submit to Administrative Agent for its approval a revised Project Budget. Any reallocation of any Cost Groupings in the Project Budget in connection with cost overruns shall be subject to Administrative Agent’s reasonable approval except as expressly set forth herein, and upon Completion of the Improvements and final payment to the Contractor, any unused non-interest contingency will be reallocated to the interest reserve and upon Completion of the Facility any unused non-interest contingency or interest reserve, after payment of all accrued interest, may be used to fund the final Advances pursuant to Section 2.01(g). The Lenders shall have no obligation to make any further Advances unless and until the revised Project Budget so submitted by Borrower is approved by Administrative Agent. All savings resulting from the modification of the Project Budget, other than for interest on the Loan, shall be reallocated to the non-interest contingency and shall be available for costs in any other Project Budget line item.

2.09 Use of Proceeds. Unless otherwise permitted by Administrative Agent, Advances shall be solely for Soft Costs and Project System Costs then due under any applicable contract or otherwise then due and payable, on the basis of invoices, statements or other evidence thereof acceptable to Administrative Agent. The Developer Fee shall be paid at the times, in the amounts, and subject to the contingencies set forth in the Development Agreement; provided, however, payment of the Developer Fee shall be suspended after the occurrence and during the continuance of a Default.

2.10 Final Construction Advance. Unless otherwise permitted by Administrative Agent, Advances for the payment of final amounts due Contractor under the Construction Contract for the payment of final amounts of Soft Costs and Advances for the payment of final amounts due the Proton System Supplier under the Proton System Purchase Agreement at Completion shall
not be made until Administrative Agent has received and approved all of the following (in addition to the conditions set forth in Section 2.04) (other than Punch List Items for which Collateral Agent is holding Punch List Items Funds in accordance with Section 2.14 of the Building Loan Agreement):

(a) evidence of Completion of the Facility and a certification from the Independent Engineer that Completion of the Facility has occurred;

(b) a Certificate of Completion signed by the Architect in form satisfactory to Administrative Agent;

(c) duly executed final unconditional lien waivers satisfactory to Administrative Agent from Contractor, Proton System Supplier and each subcontractor;

(d) evidence that all claims of lien that may have been recorded or notice thereof served on Administrative Agent or any Lender have either been paid in full and released, or Borrower has posted or caused to be posted an appropriate surety bond or other assurances (including, without limitation, title insurance) to discharge of record or insure over the same;

(e) evidence that all sums due in connection with the construction of the Improvements have been paid in full (or will be paid out of the funds requested to be advanced) and that no party claims or has a right to claim any statutory or common law lien arising out of the construction of the Improvements or the supplying of labor, material, and/or services in connection therewith;

(f) such title insurance endorsements as Administrative Agent may reasonably require, including, without limitation, endorsements to the Title Policy insuring the priority of the Mortgages upon the Mortgaged Property, excepting only such items as shall be permitted under the Loan Documents, and insuring over all mechanics’ and material suppliers’ liens arising (or which may arise) from the Completion of the Facility;

(g) an ALTA as-built survey or other satisfactory evidence (which includes an appropriate professional seal) (and which updated ALTA as-built survey shall be read into the Title Policy) showing that (A) the Improvements as they have been built and the Proton System as it has been installed are located in accordance with the Plans and Specifications and do not encroach on any easement or public or private right of way, (B) the Improvements have been constructed within the boundaries of the Property, and (C) the Improvements have been constructed within the setback lines as required by applicable zoning ordinances and do not encroach upon any other lot or property;

(h) a full and complete set of “as-built” Plans and Specifications of the Improvements and the Proton System, showing the final specifications of all Improvements and the Proton System prepared by the Contractor and reviewed by the Architect;

(i) if requested by Administrative Agent a warranty book, together with all guaranties and maintenance agreements, on all Improvements and the Proton System;
(j) satisfactory evidence of continuing insurance coverage in accordance with Section 7.01 hereof;

(k) if requested by Administrative Agent, copies of all licenses, permits and agreements necessary for the use, operation and occupancy of the Facility not previously delivered to Administrative Agent;

(l) such documents, letters, affidavits, reports and assurances as Administrative Agent, and the Independent Engineer may reasonably require, including, without limitation, executed AIA Form G704 (Certificate of Substantial Completion), executed AIA Form G706 (Contractor’s Affidavit of Payments of Debts and claims, AIA Form G706A (contractor’s Affidavit of Release of liens), AIA Form G707 (Consent of Surety of Final payment); and

(m) if requested by Administrative Agent, a notice of completion duly recorded in the official Records of the County, if then customary or required by law.

Final payments and Retainage (as defined in the Building Loan Agreement) due to one party shall not be conditioned upon delivery of the materials above with respect to other parties (for example, Retainage due to Contractor shall not be conditioned on delivery of lien waivers from Proton System Supplier or operational permits from Facility Lessee).

2.11 Intentionally Omitted.

2.12 No Reliance. All conditions and requirements of this Agreement are for the sole benefit of Administrative Agent and the Lenders and no other Person (including, without limitation, the Independent Engineer, the Contractor, and subcontractors and materialmen engaged in the construction of the Improvements) shall have the right to rely on the satisfaction of such conditions and requirements by Borrower.

2.13 Miscellaneous.

(a) The making of an Advance by the Lenders shall not constitute Administrative Agent’s or any Lender’s approval or acceptance of the construction theretofore completed. Administrative Agent’s inspection and approval of the Plans and Specifications, the construction of the Improvements, or the workmanship and materials used therein, shall impose no liability of any kind on Administrative Agent or the Lenders, the sole obligation of Administrative Agent as the result of such inspection and approval being to approve the Advances if and to the extent, required by this Agreement.

(b) ALL POTENTIAL LIENORS ARE HEREBY CAUTIONED TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER. NO POTENTIAL LIENOR SHOULD EXPECT THE LENDERS TO MAKE ADVANCES OF THE LOANS IN AMOUNTS AND AT TIMES SUCH THAT IT WILL NOT BE NECESSARY FOR EACH SUCH POTENTIAL LIENOR TO EXERCISE SOUND BUSINESS JUDGMENT IN THE EXTENSION OF CREDIT TO BORROWER.

2.14 Intentionally Omitted.
ARTICLE III
LOAN TERMS

3.01 Loans and Advances. All Advances of the Loans are subject to satisfaction of the conditions to disbursement contained in Article II of this Agreement, as well as the terms of this Article.

3.02 Requests for Advances. To request an Advance, Borrower shall deliver a Draw Package to Administrative Agent by electronic communication as provided in Section 11.01 hereof, not later than 11:00 a.m., New York City time, 10 Business Days before the date of the proposed Advance. Each such request shall be irrevocable, shall be in a form approved by Administrative Agent and shall, among other things, specify the following information:

(i) the aggregate amount of the requested Advance; and

(ii) the requested Borrowing Date of such Advance, which Borrowing Date shall be a Business Day.

Promptly following receipt of the Draw Package in accordance with this Section, Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender’s Loan to be made as part of the requested Advance.

3.03 Funding of New Loan Advances.

(a) Generally. Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 11:00 a.m., New York City time, to the account of Administrative Agent most recently designated by it for such purpose by notice to the Lenders. Administrative Agent will make such Loans available to Borrower by promptly crediting the amounts so received, in like funds, to the Borrower Operating Account maintained with Collateral Agent, unless the Administrative Agent determine to direct funds to the applicable Borrower Construction Account maintained with the Collateral Agent.

(b) Advance Fundings. Unless Administrative Agent shall have received notice from a Lender prior to the proposed date of any Advance that such Lender will not make available to Administrative Agent such Lender’s share of such Advance, Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to Borrower a corresponding amount. If a Lender is a Defaulting Lender, then such Defaulting Lender and Borrower severally agree to pay to Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to Borrower to but excluding the date of payment to Administrative Agent, at the interest rate applicable to such Loan. If such Defaulting Lender pays such amount to Administrative Agent, then such amount shall constitute such Defaulting Lender’s Loan included in such Advance.

3.04 Interest.
(a) **Interest Rate**.

**Senior First Lien Loans**. The Senior First Lien Loans shall bear interest at a per annum rate of 9.0%.

**Senior Second Lien Loans**. Prior to the Facility Substantial Completion Date, the Senior Second Lien Loans shall bear interest at a per annum rate of 11.5%. From and including the Facility Substantial Completion Date until the Maturity Date, the Senior Second Lien Loans shall bear interest at a per annum rate of 12.0%.

**Subordinated Loans**. Prior to the Facility Substantial Completion Date, the Subordinated Loans shall bear interest at a per annum rate of 13.0%, compounded quarterly. From and including the Facility Substantial Completion Date until the Maturity Date, the Subordinated Loans shall bear interest at a per annum rate of 13.5%, compounded quarterly.

(b) **Default Rate**. Notwithstanding the foregoing, to the extent permitted under applicable law, upon the occurrence of a Default, and after maturity, the Loans shall bear interest, after as well as before judgment, at a rate per annum equal to 2% plus the rate otherwise applicable to such Loans as provided in the preceding paragraphs of this Section (the “**Default Rate**”).

(c) **Payment of Accrued Interest**.

Accrued interest on the Senior First Lien Loans and the Senior Second Lien Loans shall be payable in arrears on each Interest Payment Date; provided that (i) interest accrued pursuant to paragraph (b) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, and (iii) application of any payment of interest shall be subject to the priorities set forth herein and in the Agreement Among Lenders.

Accrued interest on the Subordinated Loans shall accrue and be payable on the Maturity Date for the Subordinated Loans, provided that (i) interest accrued pursuant to paragraph (b) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, and (iii) application of any payment of interest shall be subject to the priorities set forth herein and in the Agreement Among Lenders.

(d) **Computation of Interest**. All interest hereunder shall be computed on the basis of a year of 360 days, and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

3.05 **Repayment of Loans; Evidence of Debt**.

(a) **Repayment at Maturity**. Borrower hereby unconditionally promises to pay to Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan and all unpaid accrued interest on the Maturity Date.
(b) **Lender Accounting.** Each Lender shall maintain in accordance with its usual practice an accounting of the indebtedness of Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) **Administrative Agent Accounting.** Administrative Agent shall maintain an accounting of (i) the amount of each Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from Borrower to each Lender hereunder and (iii) the amount of any sum received by Administrative Agent hereunder for the account of the Lenders and each Lender’s share thereof.

(d) **Prima Facie Evidence.** Absent manifest error, the entries made in the accounting maintained pursuant to paragraph (b) or (c) of this Section shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of any Lender or Administrative Agent to maintain such accounting or any error therein shall not in any manner affect the obligation of Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) **Notes.** The Loans made by each Lender shall be evidenced by the Note executed by Borrower in favor of such Lender.

3.06 **Prepayment of Loans.** Borrower shall have the right (i) at any time and from time to time to prepay the Senior First Lien Loans and Senior Second Lien Loans in whole or in part, and (ii) to reduce the undrawn Commitment of the Senior First Lien Lenders and Second Lien Lenders prior to Substantial Completion of the Facility, with the consent of the Administrative Agent (except for $410,000 of Commitment which may be reduced without the consent of the Administrative Agent), and after Substantial Completion of the Facility at Borrower’s election. In connection with any prepayment prior to the Make-Whole Fee End Date, there shall also be due and payable to the Senior First Lien Lenders (other than to the Proton System Supplier in its capacity as a Senior First Lien Lender or any successor or assignee in such capacity) and Senior Second Lien Lenders a Make-Whole Fee. Borrower shall notify Administrative Agent by electronic communication as provided in Section 11.01 hereof of any prepayment or reduction in Commitment not later than 11:00 a.m., New York City time, 10 Business Days before the date of prepayment. Each such notice shall be irrevocable and shall specify the effective date of such prepayment or reduction in Commitment and the principal amount of the Loans to be prepaid or undrawn Commitment to be reduced. Promptly following receipt of any such notice, Administrative Agent shall advise the Lenders of the contents thereof. Unless otherwise agreed by the Senior First Lien Lenders who are being prepaid and the Senior Second Lien Lenders, each whole or partial prepayment of the Loans or reduction in undrawn Commitment shall be applied first to prepayment or reduction of the undrawn Commitment of the Senior First Lien Loans and second to prepayment or reduction of the undrawn Commitment of the Senior Second Lien Loans. Prepayments shall be accompanied by accrued interest on the amount prepaid, plus any fees required by Section 3.07 or other amounts required by Section 3.09 hereof.

3.07 **Fees.**
(a) **Upfront Fee.** Borrower agrees to pay to Administrative Agent, on the Closing Date, (i) for the account of each Senior First Lien Lender (other than the Proton System Supplier in its capacity as a Senior First Lien Lender or any successor or assignee in such capacity) a fee equal to [****] of the Commitment of such Senior First Lien Lender, and (ii) for the account of the Senior Second Lien Lender a fee equal to [****] of the Aggregate Senior Second Lien Loan Commitment of such Senior Second Lien Lender.

(b) **Commitment Fee.** Borrower agrees to pay to Administrative Agent, on each Interest Payment Date, (i) for the account of each Senior First Lien Lender (other than the Proton System Supplier in its capacity as a Senior First Lien Lender or any successor or assignee in such capacity) a fee equal calculated at an annual rate of [****] of the undrawn Commitment of such Senior First Lien Lender, and (ii) for the account of the Senior Second Lien Lender a fee calculated at an annual rate of [****] of the undrawn Aggregate Senior Second Lien Loan Commitment of such Senior Second Lien Lender.

(c) **Arranger Fee.** Borrower agrees to pay to JPMorgan Chase Bank, N.A., on the Closing Date, an arranger fee in the amount [****].

(d) **Administrative Agent Fee.** Borrower agrees to pay to Administrative Agent, for its own account, an annual agent’s fee in the amount of [****] payable in advance, commencing on the Closing Date.

(e) **Collateral Agent and Construction Monitoring Fee.** Borrower agrees to pay to Collateral Agent, for its own account, a collateral agency and construction monitoring fee, payable from proceeds of an Advance quarterly in arrears, commencing on the third Interest Payment Date and continuing every third Interest Payment Date thereafter until the Obligations are paid in full, at which time the last installment shall be due, in an amount equal to [****]. The collateral agency and construction monitoring fee assumes that the Independent Engineer will visit the construction site no more frequently than once per month. Unless an Event of Default shall have occurred and be continuing, the fees and expenses of the Independent Engineer shall be covered by the collateral agency and construction monitoring fee. In addition, Borrower shall pay any fees and expenses of the Independent Engineer incurred or relating to any site visits that are more frequent than assume or relating to any offsite visits that may be required in connection with the performance of its responsibilities.

(f) **Fees Non-Refundable.** All fees payable hereunder shall be paid on the dates due, in immediately available funds, to Administrative Agent for distribution, in the case of the loan fee, to the Lenders. Fees paid shall not be refundable under any circumstances.

3.08 **Increased Costs.**

(a) **Increased Costs of Making or Maintaining Loans.** If any Change in Law shall (i) impose, modify or deem applicable any reserve, special deposit or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of,
deposits with or for the account of, or credit extended by, any Lender, (ii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or (iii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender or such other Recipient hereunder (whether of principal, interest or otherwise), then Borrower will pay to such Lender or such other Recipient such additional amount or amounts as will compensate such Lender or such other Recipient for such additional costs incurred or reduction suffered.

(b) Capital Adequacy. If any Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender’s capital or on the capital of such Lender’s holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender or such Lender’s holding company could have achieved but for such Change in Law (taking into consideration such Lender’s policies and the policies of such Lender’s holding company with respect to capital adequacy and liquidity), then from time to time Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender’s holding company for any such reduction suffered.

(c) Certificate of Amounts Due. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Demand For Compensation. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender’s right to demand such compensation.

3.09 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 3.09) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.
(b) **Payment of Other Taxes by Borrower.** Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Administrative Agent timely reimburse each Recipient for, Other Taxes.

(c) **Evidence of Payments.** As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 3.09, Borrower shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(d) **Indemnification by Borrower.** Borrower shall indemnify, defend and hold harmless each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto (including the expenses of enforcing the foregoing indemnification), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) **Indemnification by the Lenders.** Each Lender shall severally defend and hold harmless Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 11.04(c)(i) hereof relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto (including the expenses of enforcing the foregoing indemnification), whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by Administrative Agent to the Lender from any other source against any amount due to Administrative Agent under this paragraph (e).

(f) **Status of Lenders.**

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and Administrative Agent, at the time or times reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of
withholding. In addition, any Lender, if reasonably requested by Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.09(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender’s reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to Borrower and Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit E-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of Borrower within the meaning of section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI,
IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. Federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable law (including as prescribed by section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.09 (including by the payment of additional amounts pursuant to this Section 3.09), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.09 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay.
such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival; Defined Terms. Each party’s obligations under this Section 3.09 shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document. For purposes of this Section 3.09, the term “applicable law” includes FATCA.

3.10 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Payments Generally. Borrower shall make each payment required to be made by it hereunder prior to 11:00 a.m., New York City time, on the date when due, in immediately available funds, without set-off, counterclaim or deduction. Any amounts received after such time on any date may, in the discretion of Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to Administrative Agent at its offices at the address provided in the Collateral Account Pledge Agreement. Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be the immediately preceding Business Day. All payments hereunder shall be made in U.S. dollars.

(b) Application of Insufficient Funds. If at any time insufficient funds are received by and available to Administrative Agent to pay fully all amounts of principal, interest and fees then due and payable hereunder, subject to any written agreement among Administrative Agent and Lenders, such funds shall be applied:

(i) first, to amounts then due and payable to Administrative Agent,

(ii) second, to amounts then due and payable to the Senior First Lien Lenders,

(iii) third, to amounts then due and payable to the Senior Second Lien Lenders, and

(iv) fourth, to amounts then due and payable to the Subordinated Lenders;

and within each such priority, such funds shall be applied (x) first, towards payment of fees, indemnities and expense reimbursements then due hereunder to the parties entitled thereto; (y) second, towards payment of interest then due hereunder, ratably among the parties entitled
thereto in accordance with the amounts of interest then due to such parties, and (z) third, towards payment of principal then due hereunder then due, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) **Allocation of Payments**. If, except as otherwise expressly provided herein, any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender having the same payment priority in the Loan Collateral, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by all such Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; **provided** that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to Borrower or any subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of Borrower in the amount of such participation.

(d) **Advance Payments**. Unless Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to Administrative Agent for the account of the Lenders hereunder that Borrower will not make such payment, Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it but excluding the date of payment to Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation.

3.11 **Mitigation Obligations; Replacement of Lenders**.

(a) **Mitigation of Increased Costs**. If any Lender requests compensation under Section 3.08 hereof, or if Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.09 hereof, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to
Section 3.08 or 3.09 hereof, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.08 hereof, or if Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.09 hereof, and, such Lender fails to withdraw any such notice to Borrower within 5 Business Days after Borrower’s request for such withdrawal, then, provided no Default has occurred and is then continuing, Borrower may, at its sole expense and effort, upon written notice to such Lender and Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 11.04 hereof), all its interests, rights (other than its existing rights to payments pursuant to Section 3.08 or 3.09 hereof) and obligations under this Agreement to an assignee (other than Borrower, any Guarantors or their Affiliates) that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) Borrower shall have received the prior written consent of Administrative Agent, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, (including, without limitation, all prepayment fees) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrower (in the case of all other amounts); provided, however, that in the case of Borrower’s replacement of a Defaulting Lender for failure to fund Loans hereunder, the assignee or Borrower, as the case may be, shall hold back from such amounts payable to such Lender and pay directly to Administrative Agent, any payments due to Administrative Agent or the Non-Defaulting Lenders by Defaulting Lender under this Agreement, and (iii) in the case of any such assignment resulting from a claim for compensation under Section 3.08 hereof or payments required to be made pursuant to Section 3.09 hereof, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrower to require such assignment and delegation cease to apply.

3.12 Intentionally Omitted.

ARTICLE IV
CONSTRUCTION OF IMPROVEMENTS; GENERAL COVENANTS

4.01 Acceptance of Construction Documents; Completion of Construction.

(a) Acceptance of Construction Documents. Administrative Agent’s acceptance of the Plans and Specifications, the Architectural Services Agreement (Construction Administration), the Construction Contract, the Proton System Purchase Agreement, bonds and other construction documents (including Administrative Agent’s acceptance of any modifications thereof and any Person providing work, labor or services pursuant thereto) shall not be deemed in any respect a representation or warranty, express or implied, that the Improvements will be structurally sound, have a value of any particular magnitude or otherwise

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satisfy a particular standard, and Administrative Agent shall have no duty to inform Borrower of Administrative Agent’s assessment of any such construction document.

(b) **Completion of Construction.** Borrower shall cause the Facility to be Substantially Completed on or before the Outside Facility Substantial Completion Date. Borrower shall (a) diligently pursue construction of the Facility to Final Completion in accordance with the Construction Schedule, (b) not permit (except in the event of Force Majeure Causes) cessation of the work of construction for a period in excess of 20 consecutive days without the prior written consent of Administrative Agent, and (c) pay all sums and perform such duties as may be necessary to complete such construction of the Facility in accordance with the Plans and Specifications and in compliance with all restrictions, covenants and easements affecting the Mortgaged Property, all Legal Requirements and all Governmental Approvals, and with all terms and conditions of the Loan Documents, and, subject to Permitted Encumbrances, free from any Liens, claims or assessments (actual or contingent) asserted against the Mortgaged Property for any material, labor or other items furnished in connection therewith unless bonded and removed as a Lien on the Mortgaged Property.

(c) **Americans with Disabilities Act Compliance.** The Facility shall be constructed and hereafter maintained in strict accordance and full compliance with all of the requirements of the ADA (to the extent that the ADA requirements are applicable to the Facility pursuant to the Legal Requirements). Borrower shall be responsible for all ADA compliance costs. At Administrative Agent’s written request from time to time, Borrower shall provide Administrative Agent with written evidence of such compliance satisfactory to Administrative Agent. Borrower shall be solely responsible for all such ADA costs of compliance and reporting.

4.02 **Construction Progress.**

(a) **Material Changes to Improvements or the Proton System.** There shall be no material change in the Plans and Specifications, to the specifications to the Proton System set forth in the Proton System Purchase Agreement or to the Building Interface Document without the prior consent of Administrative Agent. A material change for purposes hereof shall be any change which (i) involves a cost of more than (A) for any single item, $1,500,000 or (B) for all such items (without netting cost increases against cost savings), $1,500,000, (ii) impairs the structural integrity or the configuration of the Facility and the Outside Facility Substantial Completion Date, (iii) substantially changes the architectural appearance of the Improvements, (iv) changes the utility of the Proton System, (v) results in any delay in the Completion of the Facility, or (iv) results in a violation of any applicable Legal Requirement. Change requests shall describe the proposed change in reasonable detail, set forth for the cost of such change and any effect such change shall have on the schedule for Completion of the Facility, and the source of funds for any payment of the costs of effecting such change, and shall be submitted to Administrative Agent for consent on a form acceptable to Administrative Agent, applicable bond sureties (if required in order to maintain the effectiveness of the bonds), and all other Persons required by Administrative Agent. Administrative Agent’s consent to any change in the Plans and Specifications, to the specifications to the Proton System set forth in the Proton System Purchase Agreement or to the Building Interface Document may be conditioned upon, among other things, Borrower’s compliance with a demand for a Balancing Deposit pursuant to Section 2.06 hereof. Borrower shall promptly correct all defects in the Facility or any material departure.
from the Plans and Specifications not previously approved by Administrative Agent to the extent required hereunder. Borrower agrees that the advance of any proceeds of the Loan, whether before or after such defects or departures from the Plans and Specifications are discovered by or brought to the attention of Administrative Agent, shall not constitute a waiver of Administrative Agent’s right to require compliance with this covenant.

(b) **Foundation Survey and Endorsement.** To the extent required by Administrative Agent, within 30 days after completion of the construction of the foundation of the Improvements, and as a condition precedent to any further Advances, Borrower shall deliver or cause to be delivered to Administrative Agent an update to the Survey showing the location of such foundation and an endorsement to the Title Policy insuring that such foundation is within the boundary lines of the Land, does not violate any applicable covenants, conditions, restrictions or agreements affecting the Land, and does not encroach upon any easements or rights of way affecting the Land or any portion thereof.

(c) **Survey Update.** If requested by Administrative Agent, within 120 days after Substantial Completion of the Facility, Borrower shall deliver or cause to be delivered to Administrative Agent an update to the survey reflecting the Facility as so completed.

(d) **Estoppel Certificates.** Within 10 days after the reasonable request of Administrative Agent from time to time, Borrower shall exercise reasonable commercial efforts to obtain and deliver to Administrative Agent an estoppel letter or certificate in form and substance satisfactory to Administrative Agent from the Facility Lessee, as determined by Administrative Agent, that the applicable agreements to which such entity is a party remain in full force and effect and that no default by Borrower exists thereunder and containing such other information as may be required to respond to such requests.

(e) **Easements and Restrictions; Zoning.** Borrower shall cause the Facility to be constructed and to be used, at all times, in accordance with (a) a C6-3 zoning district, (b) all covenants and restrictions set forth in Section 7 of the Contract of Sale, together with the covenants and restrictions set forth in the EDC Deed that are applicable to the owner of the Facility (as opposed to the operator of the Facility), (c) the Harlem-East Harlem Urban Renewal Plan, dated December 1968, as amended or otherwise modified from time to time (the “Urban Renewal Plan”) and (d) the portions of the Memorandum of Understanding between EDC and New York City Development of Environmental Protection that are applicable to the owner of the Facility (as opposed to the operator of the Facility), and for no other purpose (clauses (a) – (d), collectively, the “Use Restrictions”).

Borrower shall submit to Administrative Agent, for Administrative Agent’s written approval (not to be unreasonably withheld) prior to the execution thereof by Borrower, all proposed easements, restrictions, covenants, permits, licenses and other instruments that would affect the title to the Mortgaged Property, accompanied by a survey showing the exact proposed location thereof and such other information as Administrative Agent shall reasonably require. Borrower shall not subject the Facility or any part thereof to any easement, restriction or covenant (including any restriction or exclusive use provision in any lease or other occupancy agreement) without the prior written approval of Administrative Agent (not to be unreasonably withheld, conditioned or delayed in the case of utility easements only). With respect to any and all existing easements,
restrictions, covenants or operating agreements that benefit or burden the Facility and any easement, restriction or covenant to which the Facility may hereafter be subjected in accordance with the provisions hereof, Borrower shall: (a) observe and perform the obligations imposed upon Borrower and the Facility; (b) not alter, modify or change the same without the prior written approval of Administrative Agent in its sole discretion; (c) enforce its rights thereunder in a commercially reasonable manner so as to preserve for the benefit of the Facility the full benefits of the same; and (d) deliver to Administrative Agent a copy of any notice of default or other material notice received by Borrower in respect of the same promptly after Borrower’s receipt of such notice.

4.03 Purchase of Materials Under Conditional Sales Contract. No materials, equipment, fixtures or any other part of the Facility shall be purchased by Borrower under any security agreement or other arrangements wherein the seller reserves or purports to reserve the right to remove or to repossess any such items or to consider them personal property after their incorporation in the work of construction, unless consented to by Administrative Agent in writing or permitted to Facility Lessee by the Facility Lease.

4.04 Inspection; Independent Engineer.

(a) Inspections. Administrative Agent, through its officers, agents and employees, shall have the right at all reasonable times, on reasonable prior notice and at Administrative Agent’s sole risk (i) to enter upon the Facility and inspect the work of construction and (ii) to examine the books, records, accounting data and other documents pertaining to the Facility. Borrower will cooperate with Administrative Agent and its representatives and consultants.

(b) Independent Engineer. In furtherance of Administrative Agent’s rights hereunder, Administrative Agent may, at its option, require a monthly inspection (or other greater frequency as determined by Administrative Agent or the Independent Engineer) of the Facility by the Independent Engineer during the construction of the Improvements and the installation of the Proton System, at Borrower’s expense (subject, however, to the provisions of Section 3.07 hereof). Without limitation of the provisions of Section 4.04(a) hereof, Borrower shall provide the Independent Engineer and, upon Facility Lessee’s request, the Facility Lessee, with copies of any testing reports received by Borrower with respect to the Facility promptly upon Borrower’s receipt thereof.

(c) Exculpation. It is expressly understood and agreed that Administrative Agent is under no duty to supervise or to inspect the work of construction or equipment installation and that any such inspection by or on behalf of Administrative Agent is for the sole purpose of protecting the interests of Administrative Agent and the Lenders with respect to the Loan Collateral. Failure to inspect the work or any part thereof shall not constitute a waiver of any of Administrative Agent’s rights hereunder. Inspection not followed by notice of Default shall not constitute a waiver of any Default then existing; nor shall it constitute an acknowledgment that there has been or will be compliance with the Plans and Specifications, the specifications for the Proton System or applicable Legal Requirements or that the construction of the Improvements and installation of the Proton System is free from defective materials or workmanship. It is further understood and agreed that any consents or approvals of Lenders hereunder are for the
(d) **Authority of Independent Engineer.** Borrower acknowledges that (i) Independent Engineer has been retained by Administrative Agent to act as a consultant and only as a consultant to Administrative Agent in connection with the construction of the Improvements, (ii) Independent Engineer shall in no event or under any circumstance have any power or authority to make any decision or to give any approval or consent or to do any other act or thing which is binding upon Administrative Agent or the Lenders and any such purported decision, approval, consent, act or thing by Independent Engineer on behalf of Administrative Agent or the Lenders shall be void and of no force or effect, (iii) notwithstanding the recommendations of Independent Engineer, Administrative Agent and the Lenders reserve the right to make any and all decisions required to be made by Administrative Agent or the Lenders under this Agreement and to give or refrain from giving any and all consents or approvals required to be given by Administrative Agent or the Lenders under this Agreement and to accept or not accept any matter or thing required to be accepted by Administrative Agent or the Lenders under this Agreement, without in any instance 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 Independent Engineer to Administrative Agent, the Lenders or any other Person with respect thereto, (iv) Administrative Agent and the Lenders reserve the right in their 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 Independent Engineer to Administrative Agent, the Lenders or any other Person, and (v) Administrative Agent and the Lenders reserve the right in their sole and absolute discretion to replace Independent Engineer with another Independent Engineer at any time and without prior notice to or approval by Borrower. Borrower shall have no right to receive copies of any written reports by Independent Engineer, but in the event Administrative Agent makes such information or portions thereof available to Borrower, Borrower shall rely thereon at its own risk.

(e) **Independent Engineer Duties.** Borrower shall permit Administrative Agent to retain the Independent Engineer, at the sole cost and expense of Borrower, to perform, among other things, the following services on behalf of Administrative Agent and the Lenders:

(i) To review and advise Administrative Agent and the Lenders whether, in the opinion of the Independent Engineer, the Plans and Specifications and the Construction Contract are satisfactory;

(ii) To review Draw Requests and change orders; and

(iii) To make periodic inspections in accordance with this Section 4.04.

The Administrative Agent, the Lenders or the Independent Engineer shall not have any liability to Borrower on account of (x) the services performed by the Independent Engineer, (y) any neglect or failure on the part of the Independent Engineer to properly perform its services or (z) any approval by the Independent Engineer of construction of the Improvements. None of Administrative Agent, the Lenders or the Independent Engineer assumes any obligation to
4.05 Right to Post Signs; Publicity. On Administrative Agent’s request, Borrower will allow Administrative Agent to share signage on the Facility for the purpose of identifying Administrative Agent as the agent or lead bank and the Lenders, as the lenders for the construction financing for the Improvements. The form of such signage shall be subject to the prior approval of Borrower, such approval not to be unreasonably withheld, conditioned or delayed. Administrative Agent shall be permitted to publicize its involvement and the involvement of the Lenders in the construction financing for the Improvements with Borrower’s and Facility Lessee’s prior written approval (not to be unreasonably withheld, conditioned or delayed).

4.06 Liens, Taxes, and Governmental Claims.

(a) Liens. Borrower shall not suffer to exist, and shall pay, satisfy and obtain the release, within 30 days after having knowledge thereof (by payment, bonding and/or discharge), of all other claims and Liens affecting or purporting to affect the title to, or which may be or appear to be Liens on, the Borrower Collateral or any part thereof (other than the Permitted Encumbrances), and all costs, charges, interest and penalties on account thereof, including without limitation the claims of all Persons supplying labor or materials to the Mortgaged Property, and shall give Administrative Agent, upon demand, evidence satisfactory to Administrative Agent of the payment, satisfaction or release thereof. Borrower shall warrant and defend the validity of the Lien on the Borrower Collateral against the claims of all Persons whomsoever, subject only to Permitted Encumbrances. Notwithstanding the foregoing, nothing herein contained shall require Borrower to pay any claims or Liens which Borrower in good faith disputes and which Borrower, at its own expense, is currently and diligently contesting, provided that Borrower complies with the provisions of Section 4.06(c) hereof.

(b) Taxes. Borrower agrees to pay or cause to be paid, prior to the date they would become delinquent if not paid, any and all taxes, assessments and governmental charges whatsoever levied upon or assessed or charged against the Mortgaged Property, including all water and sewer taxes, assessments and other charges, fines, impositions and rents, if any. If requested by Administrative Agent, Borrower shall give to Administrative Agent a receipt or receipts, or certified copies thereof, evidencing every such payment by Borrower, not later than 45 days after such payment is made. Notwithstanding the foregoing, nothing herein contained shall require Borrower to pay any taxes, assessments or governmental charges which Borrower in good faith disputes and which Borrower, at its own expense, is currently and diligently contesting, provided that applicable law allows non-payment thereof during the pendency of such contest, and provided further that Borrower complies with the provisions of Section 4.06(c) hereof.

(c) Contest. Borrower shall not be required to pay any taxes, claims or governmental charges, or claims, or Liens being contested in accordance with the provisions of Section 4.06(a) or (b) hereof, as the case may be, so long as (i) Borrower diligently prosecutes such dispute or contest to a prompt determination in a manner not prejudicial to Administrative Agent or the Lenders and promptly pays all amounts ultimately determined to be owing, and (ii) Borrower
provides security for the payment of such tax, assessment or governmental charge, or claim or Lien (together with interest and penalties relating thereto) in an amount and in form and substance satisfactory to Administrative Agent. If Borrower shall fail to pay any such amounts ultimately determined to be owing or to proceed diligently to prosecute such dispute or contest as provided herein, then, upon the expiration of 10 days after written notice to Borrower by Administrative Agent of Administrative Agent’s determination thereof, in addition to any other right or remedy of Administrative Agent, Administrative Agent may, but shall not be obligated to, discharge the same, and the cost thereof shall be reimbursed by Borrower to Administrative Agent. The payment by Administrative Agent of any delinquent tax, assessment or governmental charge, or any claim or Lien which Administrative Agent in good faith believes might be prior hereto, shall be conclusive between the parties as to the legality and amount so paid, and Administrative Agent shall be subrogated to all rights, equities and liens discharged by any such expenditure to the fullest extent permitted by law.

(d) **Further Assurance of Title**. If at any time Administrative Agent has reason to believe in its reasonable opinion that any Advance is not secured or will or may not be secured by the Mortgage as a first priority Lien or security interest on the Facility (subject only to the Permitted Encumbrances), then Borrower shall, within 10 days after written notice from Administrative Agent, take such actions as are reasonably requested by Administrative Agent (including execution and delivery to Administrative Agent of all further documents and performance of all other acts that Administrative Agent reasonably deems necessary or appropriate) to assure to the satisfaction of Administrative Agent that any Advance previously made hereunder or to be made hereunder is secured or will be secured by the Mortgage as a first priority Lien or security interest with respect to the Facility (subject only to the Permitted Encumbrances). Administrative Agent, at its option, may decline to make further Advances hereunder until it has received such assurance.

4.07 **Facility Lease**.

(a) **Affirmative Covenants**. Borrower shall (i) duly and punctually observe, perform and discharge in all respects the obligations, terms, covenants, conditions and warranties of Borrower as landlord under the Facility Lease and as set forth in the Work Letter, (ii) give prompt notice to Administrative Agent of any failure on the part of Borrower to observe, perform and discharge any material obligation or of any written claim made by the Facility Lessee of any such failure by Borrower, (iii) enforce the performance of each and every obligation, term, covenant, condition and agreement in the Facility Lease to be performed by Facility Lessee and under the Work Letter, (iv) appear in and defend any action or proceeding arising under, occurring out of or in any manner connected with the Facility Lease or the Work Letter or the obligations, duties or liabilities of Borrower and Facility Lessee thereunder, do so in the name and on behalf of Administrative Agent (for the benefit of the Secured Parties) upon request by Administrative Agent, but at the expense of Borrower, and pay all costs and expenses of Administrative Agent, including reasonable attorneys’ fees and disbursements, in any action or proceeding in which Administrative Agent may appear, (v) at the request of Administrative Agent, in confirmation of the assignment and transfer contemplated by the Assignment of Leases and Consent, execute and deliver to Administrative Agent assignments and transfers of all future leases of the Facility upon the same terms and conditions as contained in the Assignment of Leases and Consents, (vi) make, execute and deliver to Administrative Agent upon demand and
at any time or times, any and all assignments and other documents and instruments which Administrative Agent may deem advisable
to carry out the true purposes and intent of the assignment set forth in the Assignment of Leases and Consents, (vii) give prompt
notice to Administrative Agent of any default by Facility Lessee under the Facility Lease, (ix) promptly upon receipt by Borrower of
any default, demand or other material notice from Facility Lessee, deliver a copy of such notice to Administrative Agent and (ix)
simultaneously with delivery of any default, demand or other material notice to Facility Lessee, deliver a copy of such notice to
Administrative Agent.

(b) **Negative Covenants.** Unless Borrower first obtains the written consent of Administrative Agent, Borrower shall not (i)
cancel, terminate or consent to any surrender of the Facility Lease or Sublease, (ii) commence any action of ejectment or any
summary proceedings for dispossession of Facility Lessee under the Facility Lease or Operator under the Sublease, (iii) modify or
alter in any respect the terms of the Facility Lease or the Sublease, (iv) waive or release the Facility Lessee, Operator or any
Guarantors from any obligations or conditions to be performed by Facility Lessee, Operator or such Guarantors, (v) enter into any
lease of any part of the Mortgaged Property (other than the Facility Lease or Sublease) unless such lease is approved by
Administrative Agent, (vi) renew or extend the term of the Facility Lease or Sublease, except as expressly pursuant to its terms, (vii)
except for the Sublease or as otherwise required by the Facility Lease, consent to any subletting of the Improvements, or any portion
thereof, or to any assignment of the Facility Lease or Sublease by Facility Lessee or the Sublease by Operator, (viii) receive or
collect any Rents, all of which shall be paid directly to the Collateral Agent pursuant to and for application in accordance with the
Collateral Account Pledge Agreement., (ix) further pledge, transfer, mortgage or otherwise encumber or assign future payments of
Rents, or (x) waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge Facility Lessee, Operator,
or any lessee under any Lease, of and from any material obligations, covenants, conditions and agreements to be kept, observed and
performed by Facility Lessee, Operator or such lessee, including the obligation to pay Rents thereunder, in the manner and at the
time and place specified therein or (xi) consent to any request by Facility Lessee under the Facility Lease that also requires the
consent of any lender of Borrower pursuant to the express terms of the Facility Lease.

4.08 **Operations of Borrower.**

(a) Without limitation of any other provisions of this Agreement or any other Loan Document, Borrower hereby
represents, warrants, covenants and agrees that it has not and shall not:

(i) engage in any business or activity other than the acquisition, development, construction, ownership, leasing,
operation and maintenance of the Facility and the Borrower Collateral, and activities incidental thereto;

(ii) acquire or own any material asset other than the Facility, and such incidental personal property as may be
necessary for the construction and operation of the Facility;
(iii) sell, lease (except pursuant to the Facility Lease or as otherwise permitted under this Agreement), exchange, convey, transfer, mortgage, assign, pledge or encumber, either voluntarily or involuntarily, or enter into an agreement to do so, of any right, title or interest of Borrower in or to the Borrower Collateral or any portion thereof;

(iv) merge into or consolidate with any Person or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case the prior written consent of Administrative Agent;

(v) fail to preserve its existence as a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of the State of Delaware and duly qualified to do business in the State of New York;

(vi) without the prior written consent of Administrative Agent, amend or modify (except as reasonably required to effectuate Permitted Transfers), terminate or fail to comply with the special purpose provisions of Borrower’s organizational documents;

(vii) own any subsidiary or make any investment in or acquire the obligations or securities of any other Person without the prior written consent of Administrative Agent;

(viii) have any member other than the Borrower Managing Member, the Borrower Non-Managing Members or Permitted Transferees or be owned or controlled, directly or indirectly, by any Person, other than 100%, direct or indirect, ownership and control by the Principals and Borrower Profit Participant, and any other Person that is a transferee in a Permitted Transfer;

(ix) commingle its assets with the assets of any of its partner(s), members, shareholders, Affiliates, or of any other Person or transfer any assets to any such Person other than distributions on account of equity interests in Borrower permitted hereunder and properly accounted for;

(x) incur any Indebtedness other than Permitted Indebtedness;

(xi) except pursuant to the Primary Completion Guaranty or the Secondary Completion Guaranty, allow any Person to pay its debts and liabilities or fail to pay its debts and liabilities solely from its own assets;

(xii) fail to maintain its records, books of account and bank accounts and financial statements separate and apart from those of the shareholders, partners, members, principals and Affiliates of Borrower, the affiliates of a shareholder, partner or member of Borrower, and any other Person, or if such financial statements are consolidated, fail to cause such financial statements to contain footnotes disclosing that the Borrower Collateral is actually owned by Borrower;
(xiii) except for the Development Agreement, the Equity Participation Agreement and the operating agreement of Borrower, enter into any contract or agreement with any shareholder, partner, member, principal or Affiliate of Borrower or any shareholder, partner, member, principal or Affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any shareholder, partner, member, principal or Affiliate of Borrower, or any shareholder, partner, member, principal or Affiliate thereof;

(xiv) seek dissolution or winding up, in whole or in part;

(xv) fail to use reasonable efforts to correct any known misunderstandings regarding the separate identity of Borrower;

(xvi) hold itself out to be responsible or pledge its assets or credit worthiness for the Indebtedness of another Person or allow any Person to hold itself out to be responsible; or pledge its assets or credit worthiness for the Indebtedness of Borrower (except pursuant to the Loan Documents);

(xvii) make any loans or advances to any third party (other than the Facility Lessee Loan) or pay any fees (other than the Developer Fee, the asset management fee described in the Equity Participation Agreement, fees payable to Administrative Agent or the Lenders, as expressly contemplated by the Project Budget or permitted under the Collateral Account Pledge Agreement), to any shareholder, partner, member, Principal or any Affiliate thereof;

(xviii) fail to file its own tax returns or to use separate contracts, purchase orders, stationery, invoices and checks;

(xix) fail either to hold itself out to the public as a legal entity separate and distinct from any Person or to conduct its business solely in its own name in order not (i) to mislead others as to the entity with which such other party is transacting business, or (ii) to suggest that Borrower is responsible for the Indebtedness of any third party (including any shareholder, partner, member, principal or affiliate of Borrower, or any shareholder, partner, member, principal or Affiliate thereof); provided that in performing its duties under the Development Agreement, [****] may use its own name and letterhead but will use commercially reasonable efforts to insure that its identity and the identity of the Borrower are kept separate and distinct;

(xx) fail to allocate fairly and reasonably among Borrower and any third party (including, without limitation, any member) any overhead, shared office space or other overhead and administrative expenses;

(xxi) allow Borrower to have any employees;

*Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

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(xxii) file a voluntary petition or otherwise initiate proceedings seeking liquidation, reorganization or other relief under any Federal, state or foreign Debtor Relief Laws, for Borrower, or consent to the institution of any proceeding or petition under Debtor Relief Laws against Borrower, or file a petition seeking or consenting to reorganization or relief of Borrower or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of Borrower or of all or any substantial part of the properties and assets of Borrower or make any general assignment for the benefit of creditors of Borrower or admit in writing the inability of Borrower to pay its debts generally as they become due or declare or effect a moratorium on Borrower debt or take any action in furtherance of any such action;

(xxiii) share any common logo with or hold itself out as or be considered as a department or division of (x) any shareholder, partner, principal, member or Affiliate of Borrower, (y) any Affiliate of a shareholder, partner, principal, member or Affiliate of Borrower, or (z) any other Person, or allow any Person to identify Borrower as a department or division of that Person; or

(xxiv) conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of Borrower or the creditors of any other Person.

(b) Borrower further represents, warrants, covenants and agrees that, prior to the Final Completion of the Facility each Principal shall devote such time and attention to the business of the Borrower as is reasonably expected to cause Borrower to timely perform its obligations hereunder and under the Loan Documents and the Project Documents to which Borrower is a party.

4.09 **Appraisals.** Administrative Agent shall have the right to order new Appraisals of the Facility from time to time. Each Appraisal is subject to review and approval by Administrative Agent. Borrower agrees upon demand to pay to Administrative Agent the cost and expense for such Appraisals and a fee for Administrative Agent’s review of each Appraisal. Borrower’s obligation to pay such cost and expense shall be limited to one Appraisal per year, unless the Appraisal is ordered after the occurrence of a Default or is required by Legal Requirement.

4.10 **Operating and Reserve Accounts.** Borrower shall maintain, and shall use commercially reasonable efforts to cause Facility Lessee to maintain, all Collateral Accounts with Collateral Agent pursuant to the Collateral Account Pledge Agreement.

4.11 **Prohibited Distributions.** Borrower shall not make any dividend or distribution to its members, or make any other payment to Persons holding a direct or indirect ownership interest in Borrower (in its capacity as such) except (a) under the Development Agreement or (b) in accordance with the Collateral Account Pledge Agreement.

4.12 **Compliance with Legal Requirements.**
(a) Borrower shall comply with all Legal Requirements, including Environmental Laws, applicable to it or its property (including, without limitation, the Loan Collateral and the Facility).

(b) Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

(c) Borrower will not request any Advance, and Borrower shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Advance (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, to the extent such activities, businesses or transaction would be prohibited by Sanctions if conducted by a corporation incorporated in the United States, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

(d) Borrower shall not (a) be or become subject at any time to any law, regulation, or list of any Governmental Authority (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits the Lenders from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower, or (b) fail to provide documentary and other evidence of Borrower’s identity as may be requested by any Lender at any time to enable such Lender to verify Borrower’s identity or to comply with any applicable law or regulation, including, without limitation, section 326 of the USA Patriot Act of 2001, 31 U.S.C. section 5318.

(e) Notwithstanding any provision of this Agreement or any of the other Loan Documents to the contrary, no Default or Unmatured Default shall occur hereunder as a result of the failure of Borrower or the Property or Improvements to comply with any Legal Requirement, including, without limitation, Environmental Laws, so long as the following conditions are satisfied in the sole discretion of the Administrative Agent:

(i) Borrower, in good faith, has properly commenced and is diligently pursuing in an appropriate forum a legal proceeding contesting the applicability of such Legal Requirement to Borrower or the Facility and has so notified Lender;

(ii) Such contest will not impair the ability to ultimately comply with the contested Legal Requirement should the contest not be successful and the conduct of the contest will not impair Borrower’s ability to Substantially Complete the Facility by the Outside Facility Substantial Completion Date;

(iii) Borrower demonstrates to Administrative Agent’s satisfaction that Borrower has the financial capability to undertake and pay for such contest and any corrective or remedial action then or thereafter likely to be necessary;
(iv) None of Administrative Agent, Collateral Agent or any Lender is at risk for any criminal liability or any civil liability due to Borrower’s non-compliance with such Legal Requirement; and

(v) Borrower’s non-compliance with such Legal Requirement will not result in a Lien or charge on the Property or the Facility, the enforcement of which is not stayed by such contest or insured over to the satisfaction of Administrative Agent.

4.13 **Government Regulation.** Borrower shall not (a) be or become subject at any time to any law, regulation, or list of any Governmental Authority (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits the Lenders from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower, or (b) fail to provide documentary and other evidence of Borrower’s identity as may be requested by any Lender at any time to enable such Lender to verify Borrower’s identity or to comply with any applicable law or regulation, including, without limitation, section 326 of the USA Patriot Act of 2001, 31 U.S.C. section 5318.

4.14 **Financial Information and Other Deliveries of Borrower.**

(a) **Deliverables by Facility Lessee.** On or before the third (3rd) Business Day after Facility Lessee delivers to Borrower the materials described in Section 14 of the Facility Lease, Borrower shall deliver copies of such materials to Administrative Agent. In addition to the foregoing, but without duplication, Borrower shall deliver (or cause to be delivered) to Administrative Agent each of those items described in subsections (b) – (e) below.

(b) **Monthly Reports.** Within 30 days after each calendar month, Borrower shall furnish Administrative 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 Facility, together with an explanation of any variances, and (v) until Substantial Completion, 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 Plans and Specifications, the Project Budget and/or the Construction Schedule delivered on the Closing Date, whether or not the same are permitted to be made without Administrative Agent’s consent, since the date of the last report and (B) all Project Costs and Facility Lessee Project Costs incurred for the applicable month and in the aggregate, by line item. Borrower shall compare the budgeted Project Costs and Facility Lessee Project Costs and the actual Project Costs and Facility Lessee Project Costs, by line item. Borrower shall prepare and submit to Administrative Agent such other monthly financial statements and reports as Administrative Agent may reasonably require. All financial statements shall be in a format reasonably satisfactory to Administrative 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 Administrative 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 Medicare/Medicaid receivable or other 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) **Quarterly and Annual Reports.** (i) No later than 45 days after the end of each of the first three calendar quarters, Borrower shall furnish Administrative Agent with a copy of Borrower’s quarterly financial statements for the prior calendar quarter, and (ii) no later than April 30 of each year, Borrower shall furnish Administrative Agent with a copy of Borrower’s audited annual financial statements for the prior calendar year, which shall be audited by Anchin, Block & Anchin or another independent certified public accounting firm consented to by Administrative Agent. Both quarterly and annual statements shall include an income statement of the Borrower, cash flow statement of the Borrower and balance sheet of the Borrower, and be accompanied by a certificate from an officer or authorized signatory of Borrower that there is no Default or Unmatured Default.

(d) **Operating Budget.** No later than December 1 of each year, Borrower shall prepare (or cause to be prepared) and shall deliver to Administrative Agent for Administrative Agent’s review and approval the proposed operating budget for the Facility for the succeeding calendar year, along with all supporting documentation; and once approved by Administrative 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 Operating Budget (or any changes to any Budget) described in the Facility Lease without the prior written consent of Administrative Agent. In addition, Borrower shall submit to Administrative Agent for Administrative Agent’s review and approval any proposed modification or amendment to any Operating Budget, along with all supporting documentation. Borrower acknowledges and agrees that any proposed modification or amendment to any such operating budget shall be subject to the Approval of Administrative Agent in good faith, in Administrative Agent’s sole and absolute discretion.

(e) **Audits.** Administrative Agent shall have the right at any time and from time to time to audit the financial information provided by Borrower pursuant to the terms of this Agreement in accordance with the then customary audit policies and procedures of Administrative Agent using auditors selected by Administrative Agent. Administrative Agent shall pay for the cost of its auditors; provided, however, if (A) such audit shall have been commenced during a Default or Unmatured Default, or (B) such audit reveals a material discrepancy from the information previously provided to Administrative Agent, Borrower shall pay the out-of-pocket costs and expenses of such audit.

(f) **Maintenance of Books and Records.** Borrower shall keep and maintain separate books and records with respect to the Facility. Borrower will allow Administrative Agent or its representatives, 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 relating vouchers or papers kept by or on behalf of Borrower or its representatives or Administrative Agent in connection with maintenance, ownership, operation or leasing of the Facility, such access to include the rights to make extracts or copies thereof. At
Administrative Agent’s request, Borrower shall also cause all of the financial information, statements, certificates and reports required to be delivered to Administrative Agent pursuant to this Section 4.13 to be delivered to Administrative Agent in electronic format.

(g) **Notice of Litigation**. Borrower shall give prompt written notice to Administrative Agent of any litigation, governmental proceedings or investigations pending or, to Borrower’s knowledge, threatened, against Borrower or Guarantor that is reasonably likely to adversely affect the Borrower Collateral or the Facility or Borrower’s or Guarantor’s ability to perform the Obligations under the Loan Documents.

(h) **Notice of Environmental Matters**. Borrower shall immediately notify Administrative Agent should Borrower become aware of (i) any Hazardous Substance or other environmental problem or liability with respect to the Facility (including, without limitation, that the Mortgaged Property or the Improvements or any part of the Facility does not comply with any Environmental Law or the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Facility that could cause the Facility or any portion thereof to fail to comply with any Environmental Law or (ii) any private or governmental Lien or judicial or administrative notice on action pending or threatened relating to Hazardous Substances or the environmental condition of the Facility.

(i) **Notice of Defaults**. Borrower shall immediately notify Administrative Agent, in writing, of the occurrence of, or the receipt of any notice of, any Default hereunder, any default under any Project Document, including any default, notice of lien or demand for past due payment from the Contractor, any laborer, subcontractor or materialman or any Project Party.

(j) **Ownership of Personalty**. Borrower shall furnish to Administrative Agent, if so requested, photocopies of the fully executed contracts, bills of sale, receipted vouchers and agreements, or any of them, under which Borrower claims title to the materials, items, fixtures and other personal property used or to be used in the construction or operation of the Facility.

(k) **Other Information**. Borrower shall deliver to Administrative Agent such other information and materials with respect to Borrower, the Borrower Collateral, the Facility, each Guarantor, or compliance with the terms of this Agreement, as Administrative Agent or any Lender may reasonably request.

4.15 **ERISA**.

(a) **Plan Assets; Compliance; No Material Liability**. Borrower hereby covenants and agrees that (i) Borrower shall not use any Plan Assets to repay or secure the Obligations, (ii) no assets of Borrower are or will be Plan Assets, (iii) each Employee Benefit Plan will be in material compliance with all applicable requirements of ERISA and the Code except to the extent any defects can be remedied without material liability to Borrower under Revenue Procedure 2008-50 or any similar procedure, and (iv) Borrower will not have any material liability under Title IV of ERISA or section 412 of the Code with respect to any Employee Benefit Plan.

(b) **Transfer of Interests**. In addition to the prohibitions set forth in this Agreement and the other Loan Documents, and not in limitation thereof, Borrower hereby covenants and
agrees that Borrower shall not assign, sell, pledge, encumber, transfer, hypothecate or otherwise dispose of its interests or rights (direct or indirect) in any Loan Document or any portion of the Borrower Collateral or attempt to do any of the foregoing or suffer any of the foregoing, or permit any party with a direct or indirect interest or right in any Loan Document or any portion of the Borrower Collateral to do any of the foregoing, if such action would cause this Agreement, any of the other Loan Documents, or the Obligations or the exercise of any of Administrative Agent’s or any Lender’s rights in connection therewith, to constitute a prohibited transaction under ERISA or the Code (unless Borrower furnishes to Administrative Agent a legal opinion satisfactory to Administrative Agent that the transaction is exempt from the prohibited transaction provisions of ERISA and the Code) or would otherwise result in the Borrower Collateral, or assets of Borrower or any Guarantor being Plan Assets.

(c) **Indemnity.** Borrower hereby agrees to indemnify, defend and hold harmless Administrative Agent, each Lender, their respective affiliates, and each of their shareholders, directors, officers and employees against all losses, claims, damages, penalties, judgments, liabilities and expenses (including, without limitation, all expenses of litigation or preparation therefor whether or not Administrative Agent, any Lender or any Affiliate is a party thereto including an enforcing of the foregoing indemnification) which any of them may actually pay or incur by reason of the investigation, defense and settlement of claims and in obtaining any prohibited transaction exemption under ERISA or the Code necessary in Administrative Agent’s or any Lender’s judgment by reason of the inaccuracy of the representations and warranties set forth in Section 6.01(i) hereof or a breach of the provisions set forth in this Section 4.17. The obligations of Borrower under this Section 4.17 shall survive the termination of this Agreement.

4.16 **Application of Loan Proceeds.** Borrower shall use the proceeds of the Loan solely and exclusively for paying Soft Costs and Project System Costs, the repayment of the Facility Lessee Reverse Loan and the making of the Facility Lessee Loan in accordance herewith and in accordance with the Project Budget, which shall be subject to no change except as expressly permitted in this Agreement. Borrower will receive the Advances to be made hereunder and will hold the right to receive the same as a trust fund for the purpose of paying the costs of the Facility, and it will apply the same first to such payment before using any part thereof for any other purpose.

4.17 **Further Assurances.** Borrower shall, at Borrower’s sole cost and expense:

(a) execute and deliver to Administrative Agent such documents, instruments, certificates, assignments and other writings, and do such other acts reasonably necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Obligations of Borrower under the Loan Documents, as Administrative Agent may reasonably require;

(b) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of this Agreement and the other Loan Documents, as Administrative Agent shall reasonably require; and
(c) furnish to Administrative Agent all instruments, documents, certificates, plans and specifications, appraisals, title and other insurance, reports and agreements and each and every other document and instrument reasonably required to be furnished by the terms of this Agreement or the other Loan Documents, all at Borrower’s expense.

4.18 Alterations.

(a) So long as the Facility Lease shall be in effect, Borrower shall not make or permit any alteration to the Facility except as requested by Facility Lessee and permitted under the Facility Lease and shall not consent to any other unpermitted alteration without the prior written consent of the Administrative Agent.

(b) At any time the Facility Lease is not in effect, Administrative Agent’s prior written approval shall be required in connection with any alterations to the Facility that may (i) have a Material Adverse Effect, (ii) adversely affect the use or operation of the Facility, (iii) adversely affect any structural component of any part of the Facility, any utility or HVAC system contained in the Facility or the exterior of any building constituting a part of the Facility or (iv) have an aggregate cost in excess of $1,500,000 (the “Alteration Threshold”). If the total unpaid amounts incurred and to be incurred with respect to any such alterations to the Improvements shall at any time exceed the Alteration Threshold, Borrower shall, upon notice from Administrative Agent, promptly deliver to Administrative Agent as security for the payment of such amounts and as additional security for Borrower’s obligations under the Loan Documents, cash or other securities acceptable to Administrative Agent. Such security shall be in an amount equal to the excess of the total unpaid amounts incurred and to be incurred with respect to alterations to the Improvements over the Alteration Threshold.

(c) Notwithstanding anything to the contrary contained herein, the initial construction of the Facility in accordance with the Plans and Specifications shall not constitute “alterations” to the Facility and will not be subject to the terms of this Section 4.18.

4.19 Property Management Agreement. Borrower shall not enter into any agreement relating to the management or operation of the Facility without the express written consent of Administrative Agent and on terms and conditions approved by the Administrative Agent.

4.20 The Development Agreement.

(a) Restrictions on the Development Agreement. Other than the Development Agreement, Borrower shall not enter into any agreement for the provision of development and construction management services with respect to the Property and the Facility without the express written consent of Administrative Agent. Borrower shall (a) diligently perform and observe all of the terms, covenants and conditions of the Development Agreement on its part to be performed and observed, (b) promptly notify Administrative Agent of any notice to Borrower of any default by Borrower in the performance or observance of any of the terms, covenants or conditions of the Development Agreement on the part of the Borrower to be performed and observed and (c) promptly notify Administrative Agent of any default by the Developer in the performance or observance of any of the terms, covenants or conditions of the Development Agreement on the part of the Developer to be performed and observed. If Borrower shall default
in the performance or observance of any material term, covenant or condition of the Development Agreement on the part of Borrower to be performed or observed, then, without limiting Administrative Agent’s other rights or remedies under this Agreement or the other Loan Documents, and without waiving or releasing Borrower from any of its Obligations hereunder or under the Development Agreement, Administrative Agent shall have the right, but shall be under no obligation, to pay any sums and to perform any act as may be appropriate to cause all the material terms, covenants and conditions of the Development Agreement on the part of Borrower to be performed or observed.

(b) **Prohibition Against Termination or Modification.** Borrower shall not surrender, terminate, cancel, modify, renew or extend the Development Agreement, or enter into any other agreement for the provision of development and construction management services with respect to the Property and the Improvements with the Developer or any other Person, or consent to the assignment by the Developer its interest under the Development Agreement, in each case without the express written consent of Administrative Agent.

(c) **Replacement of Developer.** Administrative Agent shall have the right to require Borrower to terminate the Development Agreement and replace the Developer with a Person chosen by Borrower and approved by Administrative Agent or, at Administrative Agent’s option, selected by Administrative Agent in its sole discretion, upon the occurrence of any one or more of the following events: (a) a Material Default, (b) the Developer becoming bankrupt or insolvent, or (c) the occurrence of a material default under the Development Agreement beyond any applicable grace or cure periods.

**ARTICLE V**

**COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT**

5.01 **Project Documents.**

(a) **Collateral Assignment and Security Agreement.** As security for the Obligations, Borrower hereby sells, assigns, transfers, sets over to, and grants to Collateral Agent, a security interest in, all of its right, title and interest in and to the Borrower Collateral, and in furtherance thereof, Borrower hereby sells, assigns, transfers, sets over and grants to Collateral Agent, for the benefit of the Secured Parties, a security interest in, all of its right, title and interest in and to each Project Documents, whether now owned or hereafter acquired. Borrower confirms the grants of security interest and liens under the Building Loan Mortgage, the Project Loan Mortgage, and the Collateral Account Pledge Agreement, and with respect to specific Project Documents, Borrower hereby confirms the grant of such security interest and liens under the applicable Assignment and Consent.

(b) **Performance; No Advance Payments; Enforcement.** Borrower shall perform and observe in a timely manner all covenants, conditions, obligations and agreements on the part of Borrower to be performed or observed under the Project Documents. Borrower shall not waive, excuse, condone or in any manner release or discharge any party to a Project Document from any covenants, conditions, obligations or agreements to be performed or observed by such party under such Project Document, as applicable, but shall, at its sole cost and expense, enforce and
secure the performance of all covenants, conditions, obligations and agreements to be observed by all parties under the Project Documents.

(c) **Remedies Upon Default.** Upon the occurrence and during the continuance of a Default, Collateral Agent shall have the right, but not the obligation, and Borrower hereby authorizes Collateral Agent to enforce Borrower’s rights under the Project Documents and to receive the performance of any other Person that is a party to the Project Documents. Borrower hereby agrees to pay, within 5 Business Days after demand, all such sums so paid and expended by Collateral Agent together with interest thereon from the day of such payment at the Default Rate.

(d) **Notices of Default.** Borrower shall send to Administrative Agent and Collateral Agent a copy of any written notice of demand or default or breach of or under the Project Documents that Borrower sends to (such notice to Administrative Agent and Collateral Agent to be sent simultaneously therewith) or receives from (such notice to Administrative Agent and Collateral Agent to be sent immediately upon receipt by Borrower thereof) any Person that is a party to any Project Document.

(e) **Power of Attorney.** Effective upon the occurrence and during the continuance of a Default, Borrower hereby irrevocably constitutes and appoints Collateral Agent as its attorney-in-fact, coupled with an interest, to demand, receive and enforce Borrower’s rights with respect to the Project Documents, to give appropriate receipts, releases and satisfactions for and on behalf of Borrower and to do any and all acts in the name of Borrower or in the name of Administrative Agent with the same force and effect as if Borrower had performed such acts.

(f) **License.** Provided no Default has occurred and is continuing, Borrower shall have the right under a license granted hereby to exercise its rights under the Project Documents. The license granted hereby shall be revoked at Administrative Agent’s option upon written notice from Collateral Agent to Borrower after the occurrence and during the continuance of a Default.

(g) **No Assumption of Liability.** None of Administrative Agent, Collateral Agent or any Lender assume any of Borrower’s obligations or duties under the Project Documents, including, without limitation, the obligation to pay for services rendered thereunder.

(h) **Validity and Enforceability of Project Documents.** Borrower represents and warrants that, to Borrower’s actual knowledge, the Project Documents are valid, binding and enforceable (subject to Debtor Relief Laws and general equitable principles), are in full force and effect, and there are no breaches or defaults thereunder and no events have occurred which with notice and/or lapse of time will constitute a breach or default thereunder by Borrower or any Affiliate of Borrower. Borrower represents and warrants that it has full power, right and authority to execute and enter into the Project Documents.

(i) **No Prior Conveyance or Limiting Actions.** Borrower represents and warrants that it has not previously conveyed, transferred or assigned the Project Documents or any right, title or interest therein and has not executed any other instrument which might prevent or limit

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Collateral Agent from operating under the terms and provisions of the assignment contemplated hereby, and Borrower covenants and agrees not to do any of the foregoing.

(j) **Execution and Amendment of Project Documents.** Borrower represents and warrants that, as of the date hereof, the documents identified in the definition of “Project Documents” are the only agreements (other than the Loan Documents) relating to the ownership, financing, development or operation of the Facility to which Borrower or Facility Lessee is a party or beneficiary. Borrower shall not enter into any other Project Document, or alter, amend or change in any respect, or terminate or cancel, any Project Document, in each case without obtaining Administrative Agent’s prior written consent. Administrative Agent may require, as a condition to its approval of a Project Document hereafter entered into, the execution by the contracting party of an agreement, in form and substance reasonably acceptable to Administrative Agent, whereby said contracting party (i) acknowledges the provisions of this Section 5.01, (ii) subordinates its claims against Borrower to payment in full of the Obligations and to the rights of Administrative Agent under the Loan Documents and (iii) agrees that upon the occurrence and during the continuance of a Default, Administrative Agent has the right (but not the obligation) to enforce Borrower’s rights under the subject Project Document and/or to terminate the subject Project Document.

5.02 **Plans and Specifications and Permits.**

(a) **Collateral Assignment and Security Agreement.** As additional security for the Obligations, Borrower hereby sells, assigns, transfers and sets over to Collateral Agent, for the benefit of the Secured Parties, and grants to Collateral Agent, for the benefit of the Secured Parties, a security interest in, all of Borrower’s right, title and interest in and to the Plans and Specifications and all Permits.

(b) **Remedies Upon Default.** Upon the occurrence and during the continuance of a Default, Administrative Agent shall have the right but not the obligation, and Borrower hereby authorizes Administrative Agent, to enforce Borrower’s rights with respect to the Plans and Specifications and the Permits.

(c) **Power of Attorney.** Effective upon the occurrence and during the continuance of a Default, Borrower hereby irrevocably constitutes and appoints Collateral Agent as its attorney-in-fact, coupled with an interest, to demand, receive and enforce Borrower’s rights with respect to the Plans and Specifications and the Permits, to give appropriate receipts, releases and satisfactions for and on behalf of Borrower and to do any and all acts in the name of Borrower or in the name of Collateral Agent with the same force and effect as if Borrower had performed such acts.

(d) **License.** Provided no Default has occurred and is continuing, Borrower shall have the right under a license granted hereby to exercise its rights with respect to the Plans and Specifications and the Permits. The license granted hereby shall be revoked at Administrative Agent’s option upon written notice from Collateral Agent to Borrower after the occurrence and during the continuance of a Default.
(e) **No Assumption of Liabilities**. None of Administrative Agent, Collateral Agent or any Lender assume any of Borrower’s obligations or duties with respect to the Plans and Specifications or the Permits, including, without limitation, the obligation to pay for the preparation or issuance thereof.

(f) **No Prior Conveyance or Limiting Action**. Borrower represents and warrants that it has not previously conveyed, transferred or assigned the Plans and Specifications or the Permits or any right, title or interest therein and has not executed any other instrument which might prevent or limit Administrative Agent and Collateral Agent from operating under the terms and provisions of the assignment contemplated hereby, and Borrower covenants and agrees not to do any of the foregoing.

5.03 **Reassignment**. Upon the indefeasible payment by Borrower in full of all of the Obligations and termination of the Commitments, all of Collateral Agent’s interest in the Project Documents shall automatically be deemed reassigned to Borrower (or terminated if so requested by Borrower) and Collateral Agent shall have no further interest therein. Upon written request from Borrower, Collateral Agent shall, at Borrower’s expense, execute such documentation as is reasonably necessary to reassign or terminate such interest without representation or warranty, express or implied, and without recourse in any event to Collateral Agent.

5.04 **Additional Instruments**. At Administrative Agent’s request, Borrower shall execute and deliver to Administrative Agent and Collateral Agent any and all assignments and other documents and instruments reasonably necessary to confirm the collateral assignments contemplated by this Article V.

**ARTICLE VI**

**REPRESENTATIONS AND WARRANTIES**

6.01 **Representations and Warranties**. As a material inducement to Administrative Agent, Collateral Agent and the Lenders to enter into this Agreement, and as an express condition to each Advance made hereunder, Borrower hereby represents and warrants, as follows:

(a) **Existence; Power and Authority**. Borrower is a limited liability company duly formed and validly existing in the State of Delaware and authorized to do business as a foreign limited liability company in and in good standing under the laws of the States of New York, with requisite power and authority to (i) incur the Obligations, and (ii) execute, deliver and perform this Agreement and the other Loan Documents to which it is a party.

(b) **Authorization; No Conflict**. Borrower’s execution and delivery to Administrative Agent of this Agreement and the other Loan Documents and the Project Documents to which it is a party and the full and complete performance of the provisions thereof (i) are authorized by Borrower’s operating agreement; (ii) have been duly authorized by all requisite member actions; (iii) do not require the approval or consent of any Governmental Authority having jurisdiction over Borrower or any of the Borrower Collateral; and (iv) will not result in any breach of, or constitute a default under, or result in the creation of any Lien (other than those contained in any of the Loan Documents or Project Documents) upon any property or assets of Borrower under any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument or
agreement to which Borrower is a party or by which Borrower or any of the Borrower Collateral is bound.

(c) **Title.** Borrower is the sole legal and beneficial owner of the Borrower Collateral free and clear of all Liens other than the Permitted Encumbrances. The Mortgage, when properly recorded in the appropriate records, and any Uniform Commercial Code financing statements required to be filed in connection therewith, will create a valid, first priority, perfected Lien on that portion of the Borrower Collateral constituting real property, subject only to the Permitted Encumbrances. There are no mechanics’, materialmen’s or other similar Liens or claims which have been filed for work, labor or materials affecting the Facility or any portion thereof. None of the Permitted Encumbrances, individually or in the aggregate, will have a Material Adverse Effect.

(d) **Financial Statements.** Any and all balance sheets, statements of income or loss, and financial statements heretofore furnished to Administrative Agent with respect to Borrower and each Guarantor are true and correct in all material respects as of the dates thereof, and fully and accurately present the financial condition of the subjects thereof as of the dates thereof, and no material adverse change has occurred in the financial condition reflected therein since the dates of the most recent thereof. Neither Borrower nor any Guarantor has any contingent liabilities, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments which are reasonably likely to result in a material adverse effect on the Borrower Collateral or the development, construction or operation of the Improvements as contemplated by the Loan Documents or on the financial condition of Borrower or each Guarantor, or their respective abilities to perform their obligations under the Loan Documents and the Project Documents.

(e) **Litigation.** There are no actions, suits or other legal proceedings pending, or to the actual knowledge of Borrower, threatened, against or affecting Borrower, the Borrower Collateral, or each Guarantor which (i) if adversely determined would materially and adversely affect the ability of Borrower or such Guarantor to perform its respective obligations under the Loan Documents or Project Documents or would have a material adverse effect on the use or value of the Borrower Collateral, or (ii) challenge the validity or enforceability of the Loan Documents or the priority of the Lien and security interest created thereby.

(f) **Legal Compliance.** The Plans and Specifications for the Improvements and the specifications for the Proton System have been approved by all applicable Governmental Authorities, and upon Completion of the Facility in accordance with the Plans and Specifications and such Proton System specifications, the Facility and the use and occupancy thereof will comply in all respects with all applicable Legal Requirements and the Use Restrictions. Neither the zoning nor any other right to construct, use or operate the Facility is to any extent dependent upon or related to any real estate other than the Property. All approvals, licenses and permits required from Governmental Authorities under applicable Legal Requirements in connection with the current phase of construction of the Improvements have been obtained and Borrower has no knowledge of any information suggesting that approvals, licenses and permits for future phases of construction will not be received in a timely manner.
(g) Services and Utilities. All streets, easements, utilities and related services necessary for the construction of the Improvements and the operation thereof for their intended purpose are, or when required, will be, available to the Facility.

(h) Enforceability. Each Loan Document and Project Document executed by Borrower constitutes a legal and binding obligation of, and is valid and enforceable against, Borrower in accordance with the terms thereof (subject to Debtor Relief Laws and general equitable principles) and is not subject to any right of rescission, set-off, counterclaim or defense.

(i) ERISA. Borrower is not an “employee benefit plan” as defined in section 3(3) of ERISA or a “plan” as defined in section 4975(e)(1) of the Code.

(j) Legal Parcel; Separate Tax Parcel. The Property is taxed separately and does not include any other property, and for all purposes the Property may be mortgaged, conveyed and otherwise dealt with as a separate legal parcel.

(k) Leases and Rents. Borrower has good and marketable title to the Facility Lease and all rents thereunder, free and clear of all claims and Liens. The Facility Lease is valid and unmodified and is in full force and effect, and neither Borrower nor the Facility Lessee is in default of any of the terms or provisions of the Facility Lease. The rents now due or to become due have been or will be paid directly to the Collateral Agent pursuant to the Collateral Account Pledge Agreement and have not been waived or released, discounted, set off or otherwise discharged or compromised.

(l) Project Budget. To the best of Borrower’s knowledge, the Project Budget accurately reflects all costs to acquire the Property, construct the Improvements, and acquire and install the Proton System by the Outside Facility Substantial Completion Date.

(m) Construction Schedule. To the best of Borrower’s knowledge, the Construction Schedule is complete and accurate.

(n) Compliance with Laws and Agreements. Borrower is in compliance with (i) its operating agreement or other organizational documents, (ii) all Legal Requirements applicable to it or its property (including, without limitation, the Borrower Collateral and the Facility) and (iii) all Loan Documents, all Project Documents and any other agreement or instrument to which it is a party. No Default or Unmatured Default has occurred and is continuing.

(o) Sanctions.

(i) Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Subsidiaries and their respective officers and employees and to the knowledge of the Borrower its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects.
(ii) None of Borrower, or any of its members or their members, partners, shareholders, directors, officers, brokers or other agents acting or benefiting in any capacity in connection with this Agreement or any other capital raising transaction involving any Lender, or any of its Affiliates is a Sanctioned Person. No Borrower use of proceeds or other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions.

(iii) None of the funds or assets of Borrower that are used to pay any amount due pursuant to this Agreement shall constitute funds obtained from transactions with or relating to Sanctioned Persons or countries which are the subject of sanctions under any Sanctions.

(p) Condemnation. No condemnation or similar proceeding has been commenced or, to Borrower’s knowledge, is contemplated with respect to all or any portion of the Facility or for the relocation of roadways providing access to the Facility.

(q) Insurance. Borrower has obtained and has delivered to Administrative Agent originals or certified copies of all of the insurance required pursuant to Article VII hereof, with all annual premiums prepaid thereunder, reflecting the insurance coverages, amounts and other requirements set forth in this Agreement. As of the date hereof, no claims relating to the Facility have been made under any of the insurance policies required to be maintained pursuant to Article VII hereof and, to Borrower’s knowledge, no Person, including Borrower, has done, by act or omission, anything that would impair the coverage of any of such insurance in any material respect.

(r) Governmental Approvals. As of the date of hereof and as of each date on which this representation is deemed remade, Borrower shall have all Governmental Approvals necessary for the then current stage of construction of the Facility or any part thereof or the commencement or continuance of construction thereon, as the case may be, including, but not limited to, where appropriate, all required environmental permits, all of which are in full force and effect and not, to the knowledge of Borrower, subject to any revocation, amendment, release, suspension or forfeiture. As of the date of hereof and as of each date on which this representation is deemed remade, Borrower shall have obtained all Governmental Approvals from, and given all such notices to, and taken all such other actions with respect to such Governmental Authority as may be required under applicable Legal Requirements for the then current stage of construction of the Facility.

(s) Flood Zone. No portion of the Facility is located in an area identified by the Federal Emergency Management Agency as a special flood hazard area or, if so located, the flood insurance required under Section 7.01(a)(v) is in full force and effect.

(t) Physical Condition. Neither the Mortgaged Property nor any portion thereof is now damaged as a result of any fire, explosion, accident, flood or other casualty. Borrower has not received notice from any insurance company or bonding company of any defects or inadequacies in the Mortgaged Property, or any part thereof, which would 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.
(u) **Boundaries.** All of the Improvements lie wholly within the boundaries and building restriction lines of the Mortgaged Property, and no improvements on adjoining properties encroach upon the Mortgaged Property, and no easements or other encumbrances affecting the Mortgaged Property encroach upon any of the Improvements, so as to affect the value or marketability of the Mortgaged Property except those which are insured against under the Title Policy.

(v) **Filing and Recording Taxes.** All transfer Taxes, deed stamps, intangible Taxes, Taxes on personal property or other amounts in the nature of transfer or debt Taxes required to be paid under applicable Legal Requirements in connection with the transfer of the Mortgaged Property to Borrower have been paid. All mortgage, mortgage recording, stamp, intangible, personal property or other similar Taxes required to be paid under applicable Legal Requirements in connection with the execution, delivery, recording, filing, registration, perfection or enforcement of any of the Loan Documents, including, without limitation, the Mortgage, have been paid or are being paid simultaneously herewith. Subject to Borrower’s rights to contest same in accordance with this Agreement, all Taxes and governmental assessments due and owing in respect of the Facility have been paid, or an escrow of funds in an amount sufficient to cover such payments has been established hereunder or are insured against by the Title Policy issued in connection with the Mortgage.

(w) **Report; Compliance with Environmental Laws.** Borrower has caused the preparation of (i) that certain Phase I Environmental Site Assessment of the Property, prepared by AECOM, dated as of January, 2014, as supplemented by that certain Limited Phase II Site Investigation, dated January 23, 2014, and (ii) that certain Phase I Environmental Site Assessment of the Property, prepared by The Vertex Companies, Inc., dated as of May 1, 2015 (Project No. 33788) (collectively, the “Report”), and except as disclosed in the Report, to the actual knowledge of Borrower, Borrower represents and warrants:

(i) The Facility and the Land are in full compliance with all Environmental Laws.

(iii) Neither Facility nor the Land are subject to any private or governmental Lien or the subject of any judicial or administrative notice or action pending, or to Borrower’s actual knowledge, threatened, relating to Hazardous Substances or the environmental condition of the Facility or the Land.

(iv) No Hazardous Substances are located on or have been stored, processed or disposed of on or released or discharged from (including ground water contamination) the Land, and no above or underground storage tanks exist on the Land. Borrower shall not allow any Hazardous Substances to be stored, located, discharged, possessed, managed, processed or otherwise handled on or in the Facility and shall comply with all Environmental Laws affecting the Land.

The Environmental Indemnity Agreement is incorporated herein by reference and shall be binding upon the Borrower as if fully set forth herein.
(x) **Special Purpose Entity.** The purpose of Borrower is limited solely to (i) purchasing, owning, developing, using and operating, leasing and subleasing the Facility as contemplated by the Project Documents, (ii) obtaining the Loans under this Agreement and the Building Loan Agreement, and (iii) transacting any and all lawful business that is incident, necessary and appropriate to accomplish the foregoing.

(y) **Tax Filings.** To the extent required, Borrower has filed (or has obtained effective extensions for filing) all federal, state and local income and all other federal and other material state and local Tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments payable by Borrower. Borrower believes that its tax returns properly reflect the income and taxes of Borrower for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit.

(z) **Solvency.** Borrower has not entered into the transaction or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and Borrower has received reasonably equivalent value in exchange for its Obligations under the Loan Documents. Giving effect to the Loan, the fair saleable value of Borrower’s assets exceeds and will, immediately following the making of the Loan, exceed Borrower’s total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent liabilities. The fair saleable value of Borrower aggregate assets is and will, immediately following the making of the Loan, be greater than Borrower’s probable aggregate liabilities, including the maximum amount of its contingent liabilities on its debts as such debts become absolute and matured. Borrower’s assets do not and, immediately following the making of the Loan will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. Borrower does not intend to, and does not believe that it will, incur Indebtedness and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such Indebtedness and liabilities as they mature (taking into account the timing and amounts of cash to be received by Borrower and the amounts to be payable on or in respect of obligations of Borrower).

(aa) **Federal Reserve Regulations.** 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 purposes prohibited by Legal Requirements or by the terms and conditions of this Agreement or the other Loan Documents.

(bb) **No Debt.** Borrower has not incurred any Indebtedness other than the Obligations under the Loan Agreements and other Permitted Indebtedness.

(cc) **Offices; Location of Books and Records.** The chief executive office or chief place of business and the jurisdiction of organization (as such terms are used in Article 9 of the UCC as in effect in the State of New York from time to time) of Borrower is set forth on the first page hereof, or are as otherwise described in a notice from Borrower to Administrative Agent. Borrower’s organization number is 5459883 and Borrower’s federal employer identification number is 46-4431847 Borrower’s books of accounts and records are located at its chief executive office or its chief place of business, as applicable.
(dd) **Project Documents.**

(i) **Construction Contract.** As of the date of hereof and as of each date on which this representation is deemed remade: (a) the Construction Contract shall be in full force and effect; (b) the Construction Contract shall be in the name of Borrower, (c) Borrower and Contractor shall be in full compliance with their respective obligations under the Construction Contract, except where the failure to be in compliance will not have a Material Adverse Effect; (d) the work to be performed by Contractor under the Construction Contract shall be the work called for by the Plans and Specifications; and (e) all work on the Facility theretofore completed shall have been completed in accordance with the Plans and Specifications in a good and workmanlike manner and shall be free of any defects.

(ii) **Architectural Services Agreement (Construction Administration).** As of the date of hereof and as of each date on which this representation is deemed remade: (a) the Architectural Services Agreement (Construction Administration) shall be in full force and effect; (b) the Architectural Services Agreement (Construction Administration) shall be in the name of Borrower; (c) both Borrower and/or Developer, as the case may be, shall be in full compliance with their respective material obligations under the Architectural Services Agreement (Construction Administration); and (d) the work to be performed by Architect under the Architectural Services Agreement (Construction Administration) shall include the architectural services required to design the Facility to be built in accordance with the Plans and Specifications and all architectural services required to complete the Facility in accordance with the Plans and Specifications is provided for under the Architectural Services Agreement (Construction Administration).

(iii) **Other Project Documents.** With respect to the Other Project Documents, (a) none of Borrower, Developer or Property Manager nor, to Borrower’s knowledge, any other party to any of such Project Documents is in default in the performance of, or compliance with, any material provisions under such Project Document, except where the failure to be in compliance will not have a Material Adverse Effect, (b) all permits or approvals required to have been obtained pursuant to the terms of the Project Documents through the date hereof have been so obtained and are in full force and effect as of the date hereof, (c) Borrower has caused to be delivered to Administrative Agent a true, correct and complete copy of each of the Project Documents (including all schedules, exhibits, annexes, amendments, supplements, modifications and all other documents delivered pursuant thereto or in connection therewith), (d) no material amendments or other modification have been made to any of the Project Documents since delivery to the Administrative Agent pursuant to this Agreement, and (e) each Project Document remains in full force and effect as of the date hereof. Developer and/or Borrower have not been requested to provide, and neither has provided, any letter of credit or other security with respect to its obligations pursuant to the any of the Project Documents.

(ee) **Plans and Specifications.** Borrower has furnished or made available to Administrative Agent true and complete sets of the Plans and Specifications which comply with
all applicable Legal Requirements, all Governmental Approvals, the Use Restrictions and all other restrictions, covenants and easements affecting the Facility, and which have been prepared by the Architect, delivered to the Contractor and approved by each such Governmental Authority as is required for the current stage of construction of the Improvements.

(ff) **Zoning.** The land use and zoning regulations which are in effect for the Facility as of the date hereof permit the construction of the Facility thereon on an as-of-right basis and no variance, conditional use permit, special use permit or other similar approval is required for such construction or the use of the Facility as currently used and as contemplated by the Plans and Specifications.

(gg) **Easements.** All easements, restrictions, covenants or operating agreements which benefit or burden the Mortgaged Property are in full force and effect and, to Borrower’s knowledge, there are no defaults thereunder by any party thereto.

(hh) **Lien Waivers.** To the extent permitted by law, every contract or agreement providing for services, goods or materials entered into between Borrower and a third party in connection with the construction of the Facility contains a provision waiving and releasing any and all Liens or rights of Liens which may arise in any manner on the Mortgaged Property or any part thereof, and a provision which subordinates any Liens or any rights of Lien of such third party to the Lien of the Mortgage and the rights of Administrative Agent under the Mortgage.

(ii) **Full and Accurate Disclosure.** To Borrower’s knowledge, there has been no material adverse change in any condition, fact, circumstance or event that would make the financial statements, rent rolls, reports, certificates or other documents submitted in connection with the Loan inaccurate, incomplete or otherwise misleading in any material respect or that otherwise materially and adversely affects, or is reasonably likely to have a Material Adverse Effect.

(jj) **Foreign Person.** Borrower is not a “foreign person” within the meaning of section 1445(f)(3) of the Code.

(kk) **Investment Company Act.** Borrower is not (a) an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended; or (b) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended.

(ll) **Organizational Structure.** As of the date hereof, the organizational structure of Borrower is accurately reflected on the organizational chart annexed hereto as Exhibit L.

(mm) **ADA.** The Facility has been designed and shall be constructed and completed, and thereafter maintained, in strict accordance and full compliance with all of the requirements of the ADA.

6.02 **Nature of Representations and Warranties.** All representations and warranties made in this Agreement or any other Loan Document or in any certificate or other document delivered to Administrative Agent pursuant to or in connection with this Agreement shall be deemed (a) to
have been relied upon by Administrative Agent, Collateral Agent and the Lenders notwithstanding any investigation heretofore or hereby made by Administrative Agent or on its behalf and (b) continuing in effect at all times while Borrower remains indebted to the Lenders. Each Draw Request submitted to Administrative Agent as provided in this Agreement shall constitute an affirmation that the representations and warranties contained in this Agreement and in the other Loan Documents remain true and correct in all material respects as of the date of such Draw Request unless Borrower specifically notifies Administrative Agent of any material change therein; and unless Administrative Agent is notified to the contrary, in writing (or unless a representation and warranty is made only as of a specific date), prior to the disbursement of the requested Advance or any portion thereof, shall constitute an affirmation that the same remain true and correct in all material respects on the date of such disbursement and (c) to survive and continue for so long as any amount remains payable to Administrative Agent and the Lenders under this Agreement or any of the other Loan Documents.

ARTICLE VII
INSURANCE AND CONDEMNATION

7.01 Insurance and Casualty.

(a) Required Insurance Coverage. Borrower will cause Facility Lessee to maintain the insurance required by Section 13 of the Facility Lease and otherwise comply with the requirements set forth therein and will cause and Contractor to maintain the insurance required by the Construction Contract. In addition, but without duplication of such insurance, Borrower, at its expense, shall maintain and provide to Administrative Agent duplicate originals of policies of insurance providing the following:

(i) Commercial General Liability Insurance with limits of not less than $1,000,000 per occurrence combined single limit and $2,000,000 in the aggregate for the policy period, or in whatever higher amounts as may be required by Administrative Agent from time to time by notice to Borrower (with deductibles acceptable to Lender), and extended to cover: (a) Contractual Liability assumed by Borrower with defense provided in addition to policy limits for indemnities of the named insured, (b) if any of the work is subcontracted, Independent Contractors Liability providing coverage in connection with such portion of the work which may be subcontracted, (c) Broad Form Property Damage Liability, (d) Products & Completed Operations for coverage, such coverage to apply for two years following completion of construction, (e) waiver of subrogation against all parties named additional insured, (f) severability of interest provision, (g) Personal Injury & Advertisers Liability and (g) environmental liability.

(ii) Automobile Liability including coverage on owned, hired and non-owned automobiles and other vehicles, if used in connection with the performance of the work, with Bodily Injury and Property Damage limits of not less than $1,000,000.00 per occurrence combined single limit, with a waiver of subrogation against all parties named as additional insured.
(iii) Umbrella/Excess Liability in excess of Commercial General Liability, Automobile Liability and Employers’ Liability coverages which is at least as broad as these underlying policies with a limit of liability of $25,000,000.

(iv) All-Risk Property (Special Cause of Loss) Insurance including, without limitation, coverage for loss or damage to the Facility by fire and other perils including windstorm, earthquake/earth movement and malicious mischief, building ordinance extension endorsement (including cost of demolition, increased costs of construction and the value of the undamaged portion of the building and soft costs coverage), and boiler and machinery coverage (if separate policy, that policy must include loss of rents or business interruption coverage), as specified by Administrative Agent. The policy shall be in an amount not less than the full insurable value on a replacement cost basis of the Facility and personal property related thereto (without deduction for depreciation). If the policy is a blanket policy covering the Facility and one or more other properties, the policy must specify the dollar amount of the total blanket limit of the policy that is allocated to each property, and the amount so allocated to the Facility must not be less than the full insurable value on a replacement cost basis. During any construction period, such policy shall be written in the so-called “Builder’s Risk Completed Value Non-Reporting Form” with no coinsurance requirement and shall contain a provision granting the insured permission to occupy prior to completion. Such policy shall not contain an exclusion for terrorist losses unless Borrower shall procure a separate Terrorism policy covering Certified Acts of Terrorism in an amount equal to the full replacement cost of the Facility, or the amount of the Loan, whichever is less. This policy must also list Collateral Agent as mortgagee and loss payee.

(v) If the Property, or any part thereof, lies within a “special flood hazard area” as designated on maps prepared by the Federal Emergency Management Agency (FEMA), a National Flood Insurance Program Standard Flood Insurance Policy (“SFIP”) and/or insurance from a private insurance carrier (which may substitute for or supplement, the SFIP) in form and substance acceptable to Administrative Agent covering the Facility, if applicable, for the duration of the Loans in the amount of the full insurable value of the Facility, if applicable, or the amount of the Loans, whichever is less.

(vi) Such other insurance coverages in such amounts as Administrative Agent may require, which may include, without limitation, errors and omissions insurance with respect to the contractors, architects and engineers.

(b) Policy Requirements; Insurance Consultant. All insurance policies shall (i) be issued by an insurance company licensed to do business in the state where the Facility is located having a rating of “A-” VIII or better by A.M. Best Co., in Best’s Rating Guide, (ii) name each Lender, Administrative Agent and Collateral Agent, and “any and all subsidiaries and their successors and/or assigns as their interests may appear”, as additional insureds on all liability insurance and Collateral Agent as mortgagee and loss payee on all All-Risk Property, flood insurance, and rent loss or business interruption insurance (whether or not required hereunder), (iii) be endorsed to show that Borrower’s insurance shall be primary and all insurance carried by Administrative Agent is strictly excess and secondary and shall not contribute with Borrower’s
(c) **Evidence of Insurance; Payment of Premiums.** Borrower shall deliver to Administrative Agent, at least 5 days before the expiration of an existing policy, evidence acceptable to Administrative Agent of the continuation of the coverage of the expiring policy. If Administrative Agent has not received satisfactory evidence of such continuation of coverage in the time frame herein specified, Administrative Agent shall have the right, but not the obligation, to purchase such insurance for Administrative Agent’s and the Lenders’ interest only. Any amounts so disbursed by Administrative Agent pursuant to this Section shall be repaid by Borrower within 10 days after written demand therefor. Nothing contained in this Section shall require Administrative Agent to incur any expense or take any action hereunder, and inaction by Administrative Agent shall never be considered a waiver of any right accruing to Administrative Agent on account on this Section. The payment by Administrative Agent of any insurance premium for insurance which Borrower is obligated to provide hereunder but which Administrative Agent believes has not been paid, shall be conclusive between the parties as to the legality and amounts so paid. Borrower agrees to pay all premiums on such insurance as they become due, and will not permit any condition to exist on or with respect to the Mortgaged Property which would wholly or partially invalidate any insurance thereon.

(d) **Collateral Protection.** Unless Borrower provides Administrative Agent with evidence satisfactory to Administrative Agent of the insurance coverage required by this Agreement, Administrative Agent may purchase insurance at Borrower’s expense to protect Administrative Agent’s and the Lenders’ interest in the Mortgaged Property. This insurance may, but need not, protect Borrower’s interest in the Mortgaged Property. The coverages that Administrative Agent purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Mortgaged Property. Borrower or Administrative Agent (as appropriate) may later cancel any insurance purchased by Administrative Agent, but only after Administrative Agent receives satisfactory evidence that Borrower has obtained insurance as required by this Agreement. If Administrative Agent purchases insurance for the Mortgaged Property, Borrower will be responsible for the costs of that insurance, including any charges imposed by Administrative Agent in connection with the placement of insurance, until the effective date of the cancellation or expiration of such insurance. The costs of the insurance may, at Administrative Agent’s discretion, be added to Borrower’s total principal obligation owing to Administrative Agent and the Lenders, and in any event shall be secured by the liens on the Mortgaged Property created by the Loan Documents. It is understood and agreed that the costs of insurance obtained by Administrative Agent may be more than the costs of insurance Borrower may be able to obtain on its own.
(e) **No Liability; Assignment.** Administrative Agent shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any such insurance, incur any liability for the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses, and Borrower hereby expressly assumes full responsibility therefor and all liability, if any, thereunder. Borrower hereby absolutely assigns and transfers to Collateral Agent for the benefit of the Secured Parties all of Borrower’s right, title and interest in and to any unearned premiums paid on policies and any claims thereunder and Administrative Agent and/or the Lenders shall have the right, but not the obligation, to assign any then existing claims under the same to any purchaser of the Mortgaged Property at any foreclosure sale. In the event of a foreclosure on the Mortgaged Property or other transfer of title to the Mortgaged Property in extinguishment in whole or in part of the Loans, all right, title and interest of Borrower in and to the insurance policies then in force and all proceeds payable thereunder shall thereupon vest in the purchaser at such foreclosure or Collateral Agent on behalf of the Lenders or other transferee in the event of such other transfer of title.

(f) **No Separate Insurance.** Borrower shall not carry any separate insurance on the Mortgaged Property concurrent in kind or form with any insurance required hereunder or contributing in the event of loss without Administrative Agent’s prior written consent, and any such policy shall have attached a standard non-contributing mortgagee clause, with loss payable to Collateral Agent for the benefit of the Secured Parties, and shall otherwise meet all other requirements set forth herein.

(g) **Casualty Loss.** If all or any part of the Mortgaged Property shall be damaged or destroyed by fire or other casualty, Borrower shall give immediate written notice and make a claim to the insurance carrier and Administrative Agent. With respect to any such casualty loss for which Borrower has an insurance claim that exceeds $2,000,000 Borrower hereby authorizes and empowers Administrative Agent, at Administrative Agent’s option and in Administrative Agent’s sole discretion as attorney-in-fact for Borrower, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Administrative Agent’s expenses incurred in the collection of such proceeds; provided, however, that the foregoing authorization and empowerment of Administrative Agent to act as attorney-in-fact for Borrower shall not become effective until the occurrence and during the continuance of a Default or until such time as Borrower fails to diligently pursue the collection of such insurance proceeds if Administrative Agent elects not to pursue collection thereof in Administrative Agent’s opinion. The foregoing appointment is irrevocable, coupled with an interest and continuing so long as the Commitments or Obligations remain outstanding, and such rights, powers and privileges shall be exclusive in Administrative Agent (for the benefit of the Secured Parties), its successors and assigns.

As sole loss payee on all policies of casualty insurance, Collateral Agent shall receive all insurance proceeds from any casualty loss, and shall hold the same in an interest-bearing account pending disposition in accordance with this Section 7.01(g). Borrower authorizes Administrative Agent to deduct from such insurance proceeds received by Collateral Agent all of Collateral Agent’s costs and expenses (including, without limitation, reasonable attorneys’ fees) incurred in connection with the collection thereof (the remainder of such insurance proceeds being referred to herein as “**Net Casualty Proceeds**”).

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Prior to Substantial Completion of the Facility, the Net Casualty Proceeds from any casualty loss affecting the Mortgaged Property shall be treated as a Non-Interest Balancing Deposit and disbursed in accordance with the provisions of Section 2.05 hereof if all of the following conditions are satisfied within 90 days after the applicable casualty loss: (A) Borrower satisfies Administrative Agent that the construction can be completed no later than 180 days after the Outside Facility Substantial Completion Date; and (B) Borrower delivers to Administrative Agent satisfactory evidence that the Lease will remain in full force and effect. Upon the occurrence and during the continuance of a Default or in the event Borrower is unable to satisfy the conditions set forth in subclauses (A) or (B) hereof by the required date, Administrative Agent, on behalf of the Lenders, shall have the right (but not the obligation) to apply all Net Casualty Proceeds held by it to the payment of the Obligations.

After Substantial Completion of the Facility, Administrative Agent shall cause the Net Casualty Proceeds from any casualty loss affecting the Mortgaged Property to be disbursed for the cost of reconstruction of the Mortgaged Property if all of the following conditions are satisfied within 90 days after the applicable casualty loss: (A) Borrower satisfies Administrative Agent that the reconstruction can be completed within a reasonable period of time after such casualty loss (but in no event later than the Maturity Date) and that after giving effect to such reconstruction the Mortgaged Property will be restored to its condition immediately prior to the casualty loss; (B) Borrower satisfies Administrative Agent that the Net Casualty Proceeds are sufficient to pay all costs of reconstruction, and if insufficient, Borrower deposits with Administrative Agent additional funds acceptable to Administrative Agent to make up such insufficiency; (C) Borrower delivers to Administrative Agent all plans and specifications and construction contracts for the work of reconstruction and such plans and specifications and construction contracts are in form and content acceptable to Administrative Agent and with a contractor acceptable to Administrative Agent; and (D) the Facility Lease remains in full force and effect. The disbursement of Net Casualty Proceeds pursuant to this clause (iv) shall be in accordance with customary disbursement procedures and shall not be available after the occurrence and during the continuance of a Default. Any Net Casualty Proceeds not required to reconstruct the Mortgaged Property shall be delivered to Administrative Agent, for prepayment of the Obligation. Upon the occurrence and during the continuance of a Default or in the event Borrower is unable to satisfy the conditions set forth in subclauses (A) through (D) hereof by the required date, Administrative Agent, on behalf of the Lenders, shall have the right (but not the obligation) to apply all Net Casualty Proceeds held by it to the payment of the Obligations. Borrower shall have the obligation to promptly and diligently complete the work of reconstruction necessitated by any casualty loss and restore the Mortgaged Property to the equivalent of its condition immediately prior to such casualty provided the applicable Net Casualty Proceeds are made available to Borrower for such purpose.

7.02 Condemnation and Other Awards. Immediately upon receiving written notice of the institution or threatened institution of any proceeding for the condemnation of the Mortgaged Property or any part thereof, Borrower shall notify Administrative Agent of such fact. Borrower shall then file or defend its rights thereunder and prosecute the same with due diligence to its final disposition; provided, however, that Borrower shall not enter into any settlement of such proceeding without the prior written approval of Administrative Agent. Administrative Agent shall be entitled, at its option, to appear in any such proceeding in its own name on behalf of the Lenders, and upon the occurrence and during the continuance of a Default or if Borrower fails to
diligently prosecute such proceeding, (a) Administrative Agent shall be entitled, at its option, to appear in and prosecute any such proceeding or to make any compromise or settlement in connection with such condemnation on behalf of Borrower, and (b) Borrower hereby irrevocably constitutes and appoints Administrative Agent as its attorney-in-fact, and such appointment is coupled with an interest, to commence, appear in and prosecute such action or proceeding or to make such compromise or settlement in connection with any such condemnation on its behalf. The foregoing appointment is irrevocable and continuing so long as the Commitments or Obligations remain outstanding, and such rights, powers and privileges shall be exclusive in Administrative Agent (for the benefit of the Secured Parties), its successors and assigns. If the Mortgaged Property or any material part thereof is taken or materially diminished in value in connection with such condemnation, or if a consent settlement is entered, by or under threat of such proceeding, the award or settlement payable to Borrower by virtue of its interest in the Mortgaged Property, shall be, and by these presents is, assigned, transferred and set over unto Collateral Agent for the benefit of the Secured Parties. Any such award or settlement shall be first applied to reimburse Administrative Agent and the Lenders for all costs and expenses, including reasonable attorneys’ fees, incurred in connection with the collection of such award or settlement. The balance of such award or settlement (the “Net Condemnation Proceeds”) shall be paid to Collateral Agent for the benefit of the Secured Parties for application in the manner set forth in Section 7.01(g) as if such award or settlement constituted insurance proceeds from a casualty loss; provided, however, that Administrative Agent shall have no obligation to make Net Condemnation Proceeds available for construction or reconstruction of the Mortgaged Property unless Administrative Agent has determined that the Mortgaged Property as so constructed or reconstructed after giving effect to the condemnation would have a value that is no less than its value would have been had there been no such condemnation. Borrower shall have the obligation to promptly and diligently complete the work of reconstruction necessitated by any condemnation and restore the Mortgaged Property to the equivalent of its condition immediately prior to such condemnation (or if the initial construction of the Improvements is not substantially complete at the time of such condemnation, continue the construction of the Improvements in accordance with the terms hereof) provided the applicable Net Condemnation Proceeds are made available to Borrower for such purpose.

7.03 Provisions of the Facility Lease to Govern. Notwithstanding anything to the contrary contained in Section 7.01 or Section 7.02, so long as Facility Lease shall be in full force and effect, Administrative Agent agrees to permit the use of Net Casualty Proceeds and Net Condemnation Proceeds consistently with the terms of the Facility Lease, if and to the extent Borrower is obligated under the Facility Lease to make such proceeds available for construction or reconstruction of the Facility. The remaining provisions of Section 7.01 and Section 7.02 shall apply to the extent that they are consistent with the terms of the Facility Lease. Any portion of Net Casualty Proceeds and/or Net Condemnation Proceeds not so made available for construction or reconstruction of the Facility or otherwise payable to Borrower pursuant to the Facility Lease shall be applied in accordance with the terms of Section 7.01 or Section 7.02, as the case may be.
8.01 Defaults. Any of the following events, after passage of the applicable cure period, if any, set forth below, shall constitute a “Default” hereunder:

(a) Failure to Pay Principal or Interest. The failure by Borrower to pay in full when due any principal of or interest on the Loans;

(b) Failure to Pay Other Amounts. The failure by Borrower to pay in full any fees or any other amounts due under the Loan Documents and upon which a notice has been given (other than interest or principal) and such failure continues unremedied for a period of 5 days after the due date thereof; or the failure by Borrower or any Loan Party to make any other payment or deposit required hereunder or under any of the other Loan Documents to which it is a party within the period set forth in Loan Documents, or if no period is set forth in the Loan Documents, then within 5 Business Days after demand therefor;

(c) Cross-Defaults. A “Default” occurs under the Building Loan Agreement; an “Event of Default” occurs under the Facility Lease, the Proton System Purchase Agreement or the Construction Contract; or an event occurs under any Project Document, the effect of which allows either counterparty thereto to suspend performance under or terminate such Project Document where such suspension or termination would have a Material Adverse Effect;

(d) Breach of Covenants. Any breach of the provisions of Section 4.01(b), 4.06(a), 4.08, 4.11 or 4.16 hereof;

(e) Involuntary Proceeding. An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of Borrower or any of their debts, or of a substantial part of any of their assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Borrower or for a substantial part of any of their assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(f) Voluntary Proceedings. Borrower shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (b) of this Section, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Borrower or for a substantial part of any of their assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(g) Assignment for Benefit of Creditors. The execution by Borrower of an assignment for the benefit of creditors;

(h) Unable to Pay Debts. The admission in writing by Borrower that it is unable to pay its debts as they mature or that it is generally not paying its debts as they mature;
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(i) **Liquidation of Borrower.** The liquidation, termination or dissolution of Borrower;

(j) **Transfer or Encumbrance of Interest in Borrower.** Except for any Permitted Transfer, (i) the sale, exchange, conveyance, transfer, mortgage, assignment, pledge or encumbrance, either voluntarily or involuntarily, or the agreement to do so, of any direct or indirect ownership interest in Borrower other than pursuant to the Loan Documents; or (ii) any change (whether voluntary or involuntary) in the management or control of Borrower, except for Borrower Profit Participant or any of its Affiliates or nominees;

(k) **Levy; Attachment; Seizure.** The levy, attachment or seizure pursuant to court order of (i) any right, title or interest of Borrower in and to the Borrower Collateral or any portion thereof or (ii) any Borrower Member Collateral, if such order is not vacated and the proceeding in which it was entered is not dismissed within 30 days of the entry of such order;

(l) **Failure of Representations.** Any representation or warranty contained herein or in any of the other Loan Documents or Project Document to which it is a party, or in any certificate or other document executed by Borrower or any Guarantor and delivered to Administrative Agent pursuant to or in connection with this Agreement, is not true and correct in all material respects, or omits to state a material fact necessary to make such representation not misleading, in each case, as of the date made or deemed made;

(m) **Cessation of Construction.** Cessation of the work of construction prior to the Completion of the Facility for a continuous period of 20 days or more (except to the extent due to Force Majeure Causes); or the obtaining by any Person of any order or decree in any court of competent jurisdiction enjoining the construction of any part of the Facility which order or decree is not vacated within 30 days after the granting of such order or decree;

(n) **Permits; Utilities; Insurance.** (i) The neglect, failure or refusal of Borrower to keep in full force and effect any material permit, license, consent or approval required for the construction or operation of any part of the Facility that is not fully reinstated within 30 days after Administrative Agent gives Borrower notice of the lapse of effectiveness of such material permit, license, consent or approval; or (ii) the curtailment in availability to the Mortgaged Property of utilities or other public services necessary for the full occupancy and utilization of the Improvements that is not restored to full availability within 30 days after Administrative Agent gives Borrower notice of such curtailment of availability; or (iii) the failure by Borrower to maintain any insurance required under Section 7.01 hereof;

(o) **Change in Contractor.** The occurrence of any change in Contractor without Administrative Agent’s prior written consent;

(p) **Cessation of Loan Documents to be Effective.** The cessation, for any reason, of any Loan Document to be in full force and effect; the failure of any Lien intended to be created by the Loan Documents to exist or to be valid and perfected; the cessation of any such Lien, for any reason, to have the priority contemplated by this Agreement or the other Loan Documents, subject to Borrower’s right to contest liens in accordance with the terms of this Agreement; or the revocation by any Guarantor of any Loan Document executed by such Guarantor;
(q) **Judgments.** Any judgment or order for the payment of money, not covered by insurance, in excess of $250,000 is rendered against Borrower and either (a) enforcement proceedings have been commenced by a creditor upon such judgment, or (b) there is a period of 15 days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, is not in effect;

(r) **Principals.**

(i) The Principals, jointly, are not in compliance with Section 5.5 of the Primary Completion Guaranty;

(ii) the failure of the following to be true any time: at least one Principal is alive who is in compliance with Section 5.5 of the Primary Completion Guaranty and no event described in Section 8.01(e), (f), (g), (h) or (i) shall have occurred and be continuing with respect to such Principal; or

(iii) both Principals have died and within 60 days of the latest death (x)(I) the obligations of such Principals as a Guarantor shall not have been assumed by the duly appointed personal representative of the respective estates of such Principals or by a replacement guarantor or guarantors, as applicable, reasonably satisfactory to the Administrative Agent and no event described in Section 8.01(e), (f), (g), (h) or (i) shall have occurred and be continuing with respect to such assuming guarantors or (II) in lieu of such assumption, the duly appointed personal representative of the respective estates of such Principals shall not have deposited with the Collateral Agent the sum of $10,000,000 as collateral security for the obligations of the Borrower that are guaranteed by the Principals under their Guaranties and (y) the Borrower shall not have made arrangements reasonably satisfactory to the Administrative Agent that make available to the Borrower or the Developer individuals with development expertise adequate to perform the obligations of Developer under the Development Agreement.

(s) **Regulatory Event.**

(iv) A state or federal regulator, agency or other Governmental Authority shall revoke any license, permit, certificate or qualification pertaining to the Facility or necessary for the continued operation of the Facility (including, without limitation, the Proton System), regardless of whether such license, permit, certificate or qualification was held by or originally issued for the benefit of Borrower, Facility Lessee, the Proton System, Proton System Supplier, Operator or any other Person, and a replacement license, permit, certificate or qualification providing the same rights, privileges and benefits as the one so revoked is not issued within 30 days following such revocation; or

(v) If at any time there shall occur with respect to the Facility the imposition by any Governmental Authority of sanctions in the form of either a program termination (that is not lifted within 30 days after issuance), temporary management of the Facility by any Governmental Authority, or closure, or if for any reason the Borrower, Facility Lessee, the Proton System, Proton System Supplier or Operator, is
terminated or suspended from participation in Medicare, Medicaid or any other federal or state health care or reimbursement program.

(t) **Borrower Cross-Default.** Failure by Borrower to pay when due any Indebtedness in an outstanding principal amount of $250,000 excluding the Loans; or the default by Borrower in the performance (beyond the applicable grace period with respect thereto, if any) of any term, provision or condition contained in any loan agreement or other debt instrument, or any other event shall occur or condition exist, the effect of which default, event or condition is to cause, or permit the holder(s) of such Indebtedness to cause, such Indebtedness to become due prior to its stated maturity or any commitment to lend under any such loan agreement or other debt instrument to be terminated prior to its stated expiration date; or any Indebtedness shall be declared to be due and payable or required to be prepaid or repurchased (other than by a regularly scheduled payment) prior to the stated maturity thereof; or

(u) **Construction Events.**

(i) Substantial Completion of the Improvements has not occurred on or prior to the Outside Improvements Substantial Completion Date;

(ii) Substantial Completion of the Facility has not occurred on or prior to the Outside Facility Substantial Completion Date;

(iii) Completion of the Facility has not occurred on or prior to the Outside Facility Substantial Completion Date;

(iv) any voucher or invoice is fraudulently submitted by Borrower or any of its Affiliates in connection with any Advance for services performed or for materials used in or furnished for the Facility;

(v) if Administrative Agent, the Independent Engineer or any of their representatives are not permitted access to the Facility in accordance with Section 4.04 of this Agreement; and

(vi) if Borrower shall fail to deliver to Administrative Agent or its representative, when requested upon not less than 5 Business Days’ notice, copies of the Plans and Specifications.

(v) **Failure to Perform Covenants.** The failure of Borrower or any Loan Party to fully perform any and all covenants and agreements hereunder or under any of the other Loan Documents (other than those specifically referenced in this Section 8.01) and such failure is not cured by Borrower within 30 days after Administrative Agent gives notice to Borrower thereof.

**ARTICLE IX ACCELERATION AND REMEDIES**

9.01 **Acceleration.** If any Default described in Section 8.01(d), (e), (f) or (g) hereof occurs with respect to Borrower, the obligations of the Lenders to make Loans hereunder shall automatically terminate and the Obligations shall immediately become due and payable without
any election or action on the part of Administrative Agent or any Lender. If any other Default occurs, Administrative Agent, acting at the direction of the Required Lenders, may terminate or suspend the obligations of the Lenders to make Loans hereunder, or declare the Obligations to be due and payable, or both, whereupon the Obligations shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which Borrower hereby expressly waives. If the Required Lenders (in their sole discretion) shall so direct, Administrative Agent shall, by notice to Borrower, rescind and annul such acceleration and/or termination.

9.02 Remedies under Loan Documents.

(a) Generally. Upon the occurrence and during the continuance of a Default hereunder, Administrative Agent, on behalf of the Lenders, shall have the right, in person or by agent, to exercise all rights and remedies available to Administrative Agent under this Agreement and the other Loan Documents and in respect of the Loan Collateral, including, without limitation:

(i) All rights to direct the Collateral Agent to exercise sole and exclusive control over the Collateral Accounts and to disburse funds from the Collateral Accounts in payment of the obligations secured thereby;

(ii) All rights under the Borrower Member Pledge Agreement in the Borrower Member Collateral;

(iii) All rights as a secured party hereunder under the Borrower Collateral; and

(iv) If a Default has occurred and is continuing under the Facility Lease, all rights of Borrower in the Facility Lessee Collateral.

(b) Right to Complete Construction. Upon the occurrence and during the continuance of a Default hereunder, Administrative Agent, on behalf of the Lenders, shall have the right, in person or by agent, in addition to all other rights and remedies available to Administrative Agent under this Agreement, the other Loan Documents, to the fullest extent permitted by law, to take possession of the Mortgaged Property and perform any and all work and labor necessary to complete the Improvements and the acquisition and installation of the Proton System substantially in accordance with the Plans and Specifications and the Building Interface Document (with such modifications as shall be deemed appropriate by Administrative Agent), and employ watchmen to protect the Mortgaged Property from injury. All reasonable sums so expended by Administrative Agent or any Lender shall be deemed to have been paid to Borrower and constitute Obligations. Effective upon the occurrence and during the continuance of a Default, Borrower hereby constitutes and appoints Administrative Agent its true and lawful attorney-in-fact, with full power of substitution, to so complete the Improvements in the name of Borrower. Borrower hereby empowers said attorney to: (a) use any funds of Borrower, including any funds which may remain undisbursed hereunder for the purpose of so completing the Facility; (b) make such additions, changes and corrections in the Plans and Specifications or the Building Interface Document as Administrative Agent deems appropriate; (c) employ such
contracts, agents, architects and inspectors as shall be required for said purposes; (d) pay, settle or compromise all existing bills and claims which may be liens against the Mortgaged Property, or as may be necessary or desirable for such Completion of the Facility or for clearance of title; (e) execute all applications and certificates in the name of Borrower which may be required by any of the contract documents; (f) prosecute and defend all actions or proceedings in connection with the Mortgaged Property or the construction of the Improvements and take such action and require such performance as it deems necessary under any bond or guaranty of completion; and (g) do any and every act which Administrative Agent shall determine in its sole discretion. It is further understood and agreed that this power of attorney, which shall be deemed to be a power coupled with an interest, cannot be revoked.

(c) Any such actions taken by Administrative Agent shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Administrative Agent may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Administrative Agent permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing and subject to applicable law, Borrower agrees that if a Default is continuing (i) Administrative Agent is not subject to any “one action” or “election of remedies” law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Administrative Agent shall remain in full force and effect until Administrative Agent has exhausted all of its remedies against the Borrower Collateral and the Mortgage has been foreclosed, sold and/or otherwise realized upon in satisfaction of all of the Obligations under the Loan Documents.

(d) Except as otherwise expressly set forth herein or in any other Loan Document, Borrower hereby waives to the extent not prohibited by applicable law (a) all presentments, demands for payment or performance, notices of nonperformance (except to the extent required by the provisions hereof or of any other Loan Documents), protests and notices of dishonor, (b) any requirement of diligence or promptness on Administrative Agent’s or the Lenders’ part in the enforcement of its rights (but not fulfillment of its obligations) under the provisions of this Agreement or any other Loan Document, and (c) any and all notices of every kind and description which may be required to be given by any statute or rule of law and are not otherwise required to be given hereunder or under any other Loan Document, to the fullest extent permitted by applicable law.

(e) No course of dealing and no delay or omission by Administrative Agent, the Lenders or Borrower in exercising any right or remedy hereunder or under any other Loan Document shall operate as a waiver thereof or of any other right or remedy and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. No waiver or consent shall be binding upon Administrative Agent or the Lenders unless it is in writing and signed by Administrative Agent. Administrative Agent’s exercise of Administrative Agent’s right to remedy any default by Borrower to Administrative Agent or any other Person shall not constitute a waiver of the default remedied, a waiver of any other prior or subsequent default by Borrower or a waiver of the right to be reimbursed for any and all of its expenses in so remedying such default. The making of an Advance hereunder during the existence of a Default shall not constitute a waiver
thereof. No Advance of Loan proceeds hereunder, no increase or decrease in the amount of any Advance, and no making of all or any part of an Advance prior to the due date thereof shall constitute an approval or acceptance by Administrative Agent or the Lenders of the work theretofore done or a waiver of any of the conditions of the Lenders’ obligation to make further Advances, nor in the event Borrower is unable to satisfy any such condition, shall any such failure to insist upon strict compliance have the effect of precluding the Lenders from thereafter refusing to make an Advance and/or declaring such inability to be a Default as hereinabove provided. All Advances shall be deemed to have been made pursuant hereto and not in contravention of the terms of this Agreement.

(f) The rights, powers and remedies of Administrative Agent and the Lenders under this Agreement shall be cumulative and not exclusive of any other right, power or remedy which Administrative Agent or any Lender may have against Borrower pursuant to this Agreement or the other Loan Documents, or existing at law or in equity or otherwise. Administrative Agent’s and the Lenders’ rights, powers and remedies may be pursued singly, concurrently or otherwise, at such time and in such order as the Lenders may determine in the Lenders’ sole discretion. No delay or omission to exercise any remedy, right or power accruing upon the occurrence and continuation of a Default shall impair any such remedy, right or power or shall be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Default with respect to Borrower shall not be construed to be a waiver of any subsequent Default by Borrower or to impair any remedy, right or power consequent thereon.

9.03 Curing of Defaults. Upon the occurrence of a Default hereunder, Administrative Agent or any Lender, without waiving any right of acceleration or foreclosure under the Loan Documents which Administrative Agent or the Lenders may have by reason of such Default or any other right Administrative Agent or the Lenders may have against Borrower because of said Default, shall have the right (but not the obligation) to take such actions and make such payments as shall be necessary to cure such Default, including, without limitation, the making of Advances. All amounts so expended shall constitute Obligations and shall be payable by Borrower on demand by Administrative Agent.

ARTICLE X

ADMINISTRATIVE AND COLLATERAL AGENTS

10.01 Appointment.

(a) Each of the Lenders hereby irrevocably appoints Administrative Agent as its agent and authorizes Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof, together with such actions and powers as are reasonably incidental thereto and to execute, deliver, administer and perform the Agreement and each other Loan Document to which it is a party (including in which it is expressed to be a party for the benefit of the Secured Parties). Administrative Agent shall administer this Agreement and the other Loan Documents to which it is a party and service the Loans in accordance with the terms and conditions of this Agreement.
(b) Each of the Secured Parties hereby irrevocably appoints Collateral Agent as its agent and authorizes Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to Collateral Agent by the terms hereof and the other Loan Documents to which it is a party, together with such actions and powers as are reasonably incidental thereto and to execute, deliver and perform each Loan Document to which it is a party (including in which it is expressed to be a party for the benefit of the Secured Parties).

(c) As to any matters not expressly provided for in this Agreement, or in any other Loan Document to which it is a party, Administrative Agent shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders, and Collateral Agent shall act upon the instructions of Administrative Agent, and, in each case, such instructions shall be binding upon all Lenders.

(d) Administrative Agent agrees to deliver promptly to each Lender a copy of each material notice, report, financial statement or other material documents given to it by Borrower pursuant to the terms of the Loan Documents. In addition, Administrative Agent shall provide to each Lender copies of any material reports of any consultants retained by Administrative Agent, including without limitation, the Independent Engineer, and Administrative Agent shall schedule inspections of the Property for any Lender upon the reasonable request of such Lender.

(e) Except as otherwise expressly provided in this Agreement, or in any other Loan Document to which it is a party, Administrative Agent and Collateral Agent shall take all such actions hereunder and under the other Loan Documents to which it is a party which are not inconsistent with the terms hereof or thereof as the Required Lenders shall instruct Administrative Agent, and Administrative Agent shall instruct Collateral Agent (and Administrative Agent and Collateral Agent shall be fully protected in so acting or refraining from acting upon such instructions) and such instructions shall be binding upon all of the Lenders; provided, however, that the Required Lenders shall not have the right to require any Lender to exceed its Commitment.

(f) Promptly after Administrative Agent acquires actual knowledge thereof, Administrative Agent will give written notice to each Lender of any Lien on the Property or Default or Unmatured Default under this Agreement or any of the other Loan Documents, including, without limitation, notice if any payment of principal or interest on the Loans is not made when due. Administrative Agent agrees to consult with the Lenders in respect of any material remedial action to be taken in respect of any such Default or Unmatured Default (which consultation shall include Administrative Agent’s request for the additional fees it will require from the Lenders in connection with dealing with such Default or Unmatured Default and proposed workout of the Loans) and shall act in accordance in all material respects with any decision of the Required Lenders (and shall be fully protected in so acting). Administrative Agent agrees that during any period of any Default, Administrative Agent will not take any remedial action without the prior agreement and consent of the Required Lenders.

(g) Administrative Agent shall promptly distribute to each Lender that is not a Defaulting Lender its Applicable Percentage of any payment on account of principal or interest received by Administrative Agent by credit to an account of such Lender in accordance with written wiring instructions received by Administrative Agent from such Lender, or to such other
Person or in such other manner as such Lender may designate, provided any other designated account is maintained at a commercial bank located in the United States of America. If any payments are received by Administrative Agent after 3:00 p.m. (New York time), then provided Administrative Agent shall not be able to distribute to each Lender its Applicable Percentage of any such payment on the same day as such payment is received by Administrative Agent, Administrative Agent shall hold such payment to the extent not so distributed for the benefit of the respective Lenders ratably, shall invest any such Lender’s Applicable Percentage of such payment not so distributed in overnight federal funds for the benefit of such Lender and such Lender shall be entitled to receive its Applicable Percentage of such payment together with interest earned thereon on the following Business Day.

10.02  Capacity as Lender. The bank serving as Administrative Agent and/or Collateral Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with Borrower or any Subsidiary or other Affiliate thereof as if it were not Administrative Agent hereunder.

10.03  Duties and Obligations. Administrative Agent and Collateral Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents to which it is a party. Without limiting the generality of the foregoing, (a) Administrative Agent and Collateral Agent shall not be subject to any fiduciary or other implied duties to Borrower, any Lender or any other Person, regardless of whether a Default or Unmatured Default has occurred and is continuing, (b) Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in this Agreement), (c) Collateral Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except as directed by Administrative Agent, and (d) except as expressly set forth in the Loan Documents, neither Administrative Agent nor Collateral Agent shall have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its subsidiaries or Affiliates that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in this Agreement) and Collateral Agent shall have no such liability for any action taken or not taken by it with the consent or at the request of Administrative Agent or in the absence of its own gross negligence or willful misconduct. Administrative Agent shall be deemed not to have knowledge of any Default or Unmatured Default unless and until written notice thereof is given to Administrative Agent by Borrower or a Lender, and Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or under any other Loan Document or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or any Project Document, (iv) the validity,
enforceability, effectiveness or genuineness of this Agreement, any other Loan Document, or any Project Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in this Agreement, other than to confirm receipt of items expressly required to be delivered to Administrative Agent, (vi) the value, sufficiency, creation, perfection or priority of any lien on the Loan Collateral, or (vii) the financial condition of Borrower, any Guarantor, Contractor or Proton System Supplier.

10.04  **Reliance.** Administrative Agent, Collateral Agent and each Lender shall be entitled to rely upon, and shall have no liability for relying upon, any notice, request, certificate, written agreement, instrument, document or other writing (including electronic communications) believed by it to be genuine and to have been signed or sent by the proper Person. Each of Administrative Agent, Collateral Agent and each Lender may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. Each of Administrative Agent, Collateral Agent and each Lender may consult with legal counsel, independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. Neither Administrative Agent, Collateral Agent, nor its directors, officers or employees nor any authorized representatives, agents, attorneys, or other persons permitted or authorized to act in accordance with the Loan Documents, shall be liable for any error of judgment or for any act done or omitted to be done by it in good faith or for any mistake of fact or law, or for any act which it may do or refrain from doing in good faith, except as a result of its own gross negligence, fraud or willful misconduct as determined by a court of competent jurisdiction in a final non-appealable judgment.

10.05  **Sub-Agents.** Administrative Agent and Collateral Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by Administrative Agent and/or Collateral Agent, as the case may be. Administrative Agent, Collateral Agent and any such sub-agent thereof may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of Administrative Agent, Collateral Agent and any such sub-agent thereof, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

10.06  **Resignation and Removal.**

(a) Subject to the appointment and acceptance of a successor as provided in this paragraph, Administrative Agent and/or Collateral Agent may resign at any time upon no less than 90 days prior written notice to the Secured Parties and Borrower. Upon any such resignation, the Required Lenders (other than Subordinated Lender) shall have the right to appoint a successor. If no successor is appointed by such Required Lenders within 30 days after the retiring Administrative Agent and/or Collateral Agent gives notice of its resignation, the Required Senior First Lien Lenders shall have the right to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 60 days after the retiring Administrative Agent and/or Collateral Agent gives notice of its resignation, then the retiring Administrative Agent and/or Collateral Agent may, on behalf of the Lenders, appoint a successor Administrative Agent which shall be a national or state chartered
bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and/or Collateral Agent, and the retiring Administrative Agent and/or Collateral Agent shall be discharged from its duties and obligations hereunder as of the date of such successor’s acceptance of its appointment and assumption of its obligations as such, in writing, as Administrative Agent, or Collateral Agent, as the case may be. The fees payable by Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After Administrative Agent’s and/or Collateral Agent’s resignation hereunder, the provisions of this Article X and Section 11.03 hereof shall continue in effect for the benefit of such retiring Administrative Agent and/or Collateral Agent, as the case may be, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent and/or Collateral Agent.

(b) The Required Lenders shall have the right to remove Administrative Agent, or to direct Administrative Agent to remove Collateral Agent, by written notice to Borrower and Administrative Agent to be effective as to Borrower as and when such notice is actually received by Borrower. If the Required Lenders shall remove Administrative Agent or direct the removal of Collateral Agent, then the Required Lenders shall designate another Lender to perform the obligations and exercise the rights of Administrative Agent or Collateral Agent, as the case may be, hereunder. The successor Administrative Agent or Collateral Agent shall assume such obligations in writing and from and after Borrower’s receipt of a copy of notice of such replacement and receipt of a copy of such assumption the successor Administrative Agent or Collateral Agent shall be the sole Administrative Agent or Collateral Agent, as the case may be, hereunder and the term “Administrative Agent” or “Collateral Agent” shall thereafter refer to such successor. Borrower shall have no approval right with respect to any replacement Administrative Agent or Collateral Agent.

(c) Notwithstanding anything to the contrary contained herein, in no event may any Subordinated Lender or any of its Affiliates or Borrower or any of its Affiliates (other than Senior Second Lien Lender or any of its Affiliates) be Administrative Agent.

10.07 Independent Credit Analysis. Each Lender acknowledges and agrees that the extensions of credit made hereunder are commercial loans and not investments in a business enterprise or securities. Each Lender further represents that it is engaged in making, acquiring or holding commercial loans in the ordinary course of its business and has, independently and without reliance upon Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder. Each Lender shall, independently and without reliance upon Administrative Agent or any other Lender and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning Borrower and its Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any related agreement or any document furnished hereunder or thereunder and in deciding whether or to the extent to which it will continue as a lender or assign or otherwise transfer its rights, interests and obligations hereunder.
10.08 Lender Actions Against Collateral. Each Lender agrees that it will not take any action, nor institute any actions or proceedings, with respect to the Obligations, against Borrower, any Guarantor, or any other obligor under this Agreement, the other Loan Documents, the Project Documents or against any of the Loan Collateral (including, without limitation, set-off rights) without the consent of the Required Lenders. With respect to any action by Administrative Agent and/or Collateral Agent to enforce the rights and remedies of Administrative Agent and the Lenders under this Agreement and the other Loan Documents, each Lender hereby consents to the jurisdiction of the court in which such action is maintained, and agrees to deliver its Note to Administrative Agent to the extent necessary to enforce the rights and remedies of Administrative Agent for the benefit of the Secured Parties under the Mortgage in accordance with the provisions hereof. Each Lender agrees to indemnify each of the other Lenders for any loss or damage suffered or cost incurred by such other Lender (including without limitation, attorneys’ fees and expenses and other costs of defense) as a result of the breach of this Section 10.08 by such Lender.

10.09 Lender Reply Period. All communications from Administrative Agent to Lenders requesting Lenders’ determination, consent or approval (i) shall be given in the form of a written notice to each Lender, (ii) shall be accompanied by a description of the matter as to which such determination, consent or approval is requested, (iii) shall include a legend substantially as follows, printed in capital letters or boldface type:

“THIS COMMUNICATION REQUIRES IMMEDIATE RESPONSE. ADD TO SECOND NOTICE: FAILURE TO RESPOND WITHIN TEN (10) BUSINESS DAYS AFTER THE DELIVERY OF THIS COMMUNICATION SHALL BE DEEMED APPROVAL OF THE MATTER DESCRIBED ABOVE BY THE ADDRESSEE.”

and (iv) shall include Administrative Agent’s recommended course of action or determination in respect thereof, each Lender shall (each, an “Administrative Agent Consent Request Notice”). If a Lender shall fail to timely respond in writing to Administrative Agent, Administrative Agent shall send a second Administrative Agent Consent Request Notice to Lender. Each Lender shall endeavor to reply promptly to any such request, but in any event within 10 Business Days after the delivery of such request by the second Administrative Agent Consent Request Notice (the “Lender Reply Period”). Unless a Lender shall give written notice to Administrative Agent that it objects to the recommendation (together with a written explanation of the reasons behind such objection) prior to the expiration of the Lender Reply Period, such Lender shall be deemed to have approved of or consented to such recommendation or determination. With respect to decisions requiring the approval of the Required Lenders or all Lenders, Administrative Agent shall timely submit any required written notices to all Lenders and upon receiving the required approval or consent shall follow the course of action or determination recommended by Administrative Agent or such other course of action recommended by the Required Lenders or all of the Lenders, as the case may be and each non-responding Lender shall be deemed to have concurred with such recommended course of action.
10.10 **Defaulting Lender.** Notwithstanding any provision of this Agreement to the contrary, if a Lender becomes a Defaulting Lender, the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) **Suspension of Voting Rights.** Such Defaulting Lender shall not have the right to vote on any issue on which voting is required (other than to the extent expressly provided in Section 11.02(b)) and the Commitment of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder.

(b) **Turn Over of Payments.** All amounts payable hereunder to the Defaulting Lender in respect of the Obligations (whether on account of principal, interest, fees or otherwise, including, without limitation, interest payments from interest reserve allocations to the Defaulting Lender and any amounts that would otherwise be payable to the Defaulting Lender pursuant to Section 3.10, but excluding Section 3.11(b)) hereof, shall be paid to Administrative Agent, retained in a segregated account and, subject to any applicable requirements of law, be applied at such time or times as may be determined by Administrative Agent as follows: (i) **first**, to the payment of any reasonable amounts actually due and owing by the Defaulting Lender to Administrative Agent hereunder as determined by Administrative Agent in good faith, (ii) **second**, to the funding of any Advance in respect of which the Defaulting Lender has failed to fund its portion as required by this Agreement, as determined by Administrative Agent, in good faith (iii) **third**, to the payment of any reasonable amounts actually due and owing by the Defaulting Lender to the Non-Defaulting Lenders hereunder, including without limitation for any Special Advance under paragraph (c) of this Section 10.11, as determined by Administrative Agent in good faith and (iv) **fourth**, to the Defaulting Lender.

(c) **Special Advances.** If a Lender fails to fund its portion of any Advance, in whole or part (such amount, a “Deficiency”), within 10 Business Days after the date required hereunder and Administrative Agent shall not have funded such Deficiency under Section 3.03(b) hereof, Administrative Agent shall so notify the Lenders in writing, and within 3 Business Days after delivery of such notice, the Non-Defaulting Lenders shall have the right, but not the obligation, in their respective, sole and absolute discretion, to fund all or a portion of such Deficiency (the amount so funded by any such Non-Defaulting Lenders being referred to herein as a “Special Advance”) to Borrower. In such event, the Defaulting Lender and Borrower agree to pay to Administrative Agent for payment to the Lenders making the Special Advance, forthwith on demand such amount with interest thereon, for each day from and including the date such amount is made available to Borrower to but excluding the date of payment to Administrative Agent, at the interest rate that would have been applicable to such Deficiency if funded by the Defaulting Lender.

(d) **Option to Purchase Future Commitment.** The Non-Defaulting Lenders shall have the right, but not the obligation, in their respective, sole and absolute discretion, to acquire for no cash consideration (pro rata, based on the respective Commitments of those Lenders electing to exercise such right), a Defaulting Lender’s Commitment to fund future Loans (the “Future Commitment”). Upon any such purchase of the Defaulting Lender’s Future Commitment, the Defaulting Lender’s share in future Advances and its rights under the Loan Documents with respect thereto shall terminate on the date of purchase, and the Defaulting Lender shall promptly execute all documents reasonably requested to surrender and transfer such interest.
(e) **Replacement of Defaulting Lender**.

(i) **By Required Lenders**. The Required Lenders may, upon notice to the Defaulting Lender and Administrative Agent, require the Defaulting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 11.04 hereof) all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Defaulting Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrower (in the case of all other amounts); and (ii) Administrative Agent shall have received payment of any amounts owing by such Lender to Administrative Agent or the other Lenders under this Agreement. The Defaulting Lender shall not be required to make any such assignment and delegation if, prior thereto, such Lender shall cease to be a Defaulting Lender.

(ii) **By Borrower**. If the Lender has become a Defaulting Lender due to a failure to fund its Loans hereunder, Borrower may at its option replace Defaulting Lender under Section 3.11(b) hereof.

(f) **Indemnification**. Each Defaulting Lender shall indemnify, defend and hold harmless Administrative Agent, each Non-Defaulting Lender and Borrower from and against any out-of-pocket liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatever which may be imposed on, incurred by or asserted against Administrative Agent, any Non-Defaulting Lender or Borrower with respect to the Loan Documents arising out of such Lender’s status as a Defaulting Lender (including in enforcing the foregoing indemnification. The obligations of the Defaulting Lender under this clause (f) shall survive the payment of the Obligations, the termination of this Agreement and the Defaulting Lender’s reversion to a Non-Defaulting Lender under paragraph (g) of this Section 10.11.

(g) **Ceasing to be a Defaulting Lender**. A Lender shall cease to be Defaulting Lender only upon (i) the payment of all amounts due and payable by Defaulting Lender to Administrative Agent or any other Lender under this Agreement; (ii) the payment of any out-of-pocket damages suffered by Borrower or any other Lender as a result of such Defaulting Lender’s default hereunder; and (iii) the circumstances described in clause (d) of the definition of “Defaulting Lender” do not exist. An assignment by a Lender of its rights and obligations under this Agreement shall not in and of itself cause the Lender to cease to be a Defaulting Lender.

10.11 **Borrower’s Rights**. The provisions of this Article X are solely for the benefit of Administrative Agent and the Lenders, and Borrower shall not have any rights to rely on, enforce or consent to any waiver, modification or amendment of, any of the provisions hereof; provided, however, that Borrower (a) acknowledges and agrees to the limitations set forth in Section 11.02(c) hereof on Administrative Agent’s ability to act unilaterally with respect to this Agreement, the other Loan Documents or the Project Documents, and (b) agrees that Administrative Agent’s inability to deliver any consent to, or approval of, an action requested by
Borrower due to lack of appropriate Required Lender consent in accordance with the provisions of Section 11.02(c) hereof or the Agreement Among Lenders shall not constitute an unreasonable withholding or delay by Administrative Agent in the giving of such consent or approval. Notwithstanding the foregoing, Borrower shall be entitled to rely on consents and approvals executed by Administrative Agent without investigation as to the existence of proper Lender authorization. As among Administrative Agent and the Lenders, the provisions of this Article 10 may be amended, waived or otherwise modified by Administrative Agent and the Lenders without Borrower’s consent and without the need for Borrower to be party to any of the same.

10.12 Non-liability of Administrative Agent and the Lenders. Borrower acknowledges and agrees that:

(a) any inspections of the construction of the Improvements made by or through Administrative Agent or the Lenders are for purposes of administration of the Loan only and Borrower is not entitled to rely upon the same with respect to the quality, adequacy or suitability of materials or workmanship, conformity to the Plans and Specifications, state of completion or otherwise; Borrower shall make its own inspections of such construction to determine that the quality of the Improvements and all other requirements of such construction are being performed in a manner satisfactory to Borrower and in conformity with the Plans and Specifications and all other requirements; and Borrower shall immediately notify Administrative Agent, in writing, should the same not be in conformity with the Plans and Specifications and all other requirements;

(b) by accepting or approving anything required to be observed, performed, fulfilled or given to Administrative Agent or the Lenders pursuant to the Loan Documents, including any certificate, statement of profit and loss or other financial statement, survey, appraisal, lease or insurance policy, neither Administrative Agent nor the Lenders shall be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof and such acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by Administrative Agent or the Lenders;

(c) neither Administrative Agent nor the Lenders undertake nor assume any responsibility or duty to Borrower to select, review, inspect, supervise, pass judgment upon or inform Borrower of any matter in connection with the Property, including, without limitation, matters relating to the quality, adequacy or suitability of: (i) the Plans and Specifications, (ii) architects, contractors, subcontractors and materialmen employed or utilized in connection with the construction of the Improvements, or the workmanship of or the materials used by any of them, or (iii) the progress or course of construction and its conformity or nonconformity with the Plans and Specifications; and Borrower shall rely entirely upon its own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or supply of information to Borrower by Administrative Agent or the Lenders in connection with such matters is for the protection of Administrative Agent and/or the Lenders only and neither Borrower nor any third party is entitled to rely thereon;
(d) neither Administrative Agent nor the Lenders owe any duty of care to protect Borrower against negligent, faulty, inadequate or defective building structures, procedures or materials or construction;

(e) neither Administrative Agent nor any Lender shall be liable for any act or omission of any Defaulting Lender; and

(f) neither Administrative Agent nor any Lender shall be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any person or property arising from any construction on, or occupancy or use of, any of the Property, including without limitation any loss, claim, cause of action, liability, indebtedness, damage or injury caused by, or arising from: (i) any defect in any building, structure, grading, fill, landscaping or other improvements. thereon or in any on-site or off-site improvement or other facility therein or thereon; (ii) any act or omission of Borrower, the parties comprising Borrower or any of Borrower’s agents, employees, independent contractors, licensees or invitees; (iii) any accident in or on the Property and Improvements or any fire, flood or other casualty or hazard thereon; (iv) the failure of Borrower or any of Borrower’s licensees, employees, invitees, Administrative Agent, independent contractors or other representatives to maintain the Property in a safe condition; and (v) any nuisance made or suffered on any part of the Property.

ARTICLE XI
MISCELLANEOUS

11.01 Notices.

(a) Generally. Except in the case of notices and other communications expressly permitted to be given by electronic communication (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

if to Borrower, to it at

[****]

with a copy to:

[****]

if to Administrative Agent, to it at

[****]

and

______________________________

*Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
if to any other Lender, to it at its address (or telecopy number or email address) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through Electronic Systems, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by using Electronic Systems pursuant to procedures approved by Administrative Agent; provided that the foregoing shall not apply to notices and advances unless otherwise agreed by Administrative Agent and the applicable Lender. The Administrative Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) Changes in Address. Any party hereto may change its address or telecopy number or email address for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

(d) Electronic Systems. Borrower agrees that Administrative Agent may, but shall not be obligated to, make Communications (as defined below) available to the other Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak, ClearPar or a substantially similar Electronic System.

Any Electronic System used by Administrative Agent is provided “as is” and “as available.” The Administrative Agent does not warrant the adequacy of such Electronic Systems and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by Administrative Agent in connection with the Communications or any Electronic System. In no event shall Administrative Agent have any liability to Borrower, any Lender, or any other Person or entity for damages of any kind, including, without limitation,
direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of Borrower’s or Administrative Agent’s transmission of communications through an Electronic System. “Communications” means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of Borrower pursuant to any Loan Document or the transactions contemplated therein which is distributed by Administrative Agent or any Lender by means of electronic communications pursuant to this Section, including through an Electronic System.

11.02 Waivers; Amendments.

(a) No Deemed Waivers; Remedies Cumulative. No failure or delay by Administrative Agent or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of Administrative Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be permitted by Section 11.02(b) hereof, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default or Unmatured Default, regardless of whether Administrative Agent or any Lender may have had notice or knowledge of such Default or Unmatured Default at the time.

(b) Waivers and Amendments. No provision of this Agreement or the Project Loan Agreement may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by Borrower and the Required Lenders or by Borrower and Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender (including any such Lender that is a Defaulting Lender), (ii) increase or reduce the principal amount of any Loan or reduce the rate of interest thereon, or reduce or waive the Make-Whole Fee any other fees payable hereunder, without the written consent of each Lender affected thereby (including any such Lender that is a Defaulting Lender), (iii) shorten or extend the Maturity Date or any scheduled date of payment of the principal amount of any Loan or any interest thereon, or the Make-Whole Fee or any other fees payable hereunder, or reduce the amount of, waive or excuse any such payment, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) affected thereby, (iv) change Section 3.10(b) hereof or Section 3.10(c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender (including any such Lender that is a Defaulting Lender), (v) waive, amend or modify the provisions limiting transfers of direct or indirect interests in Borrower without the written consent of each Lender; (vi) change any of the provisions of this Section or the definition of “Required Lenders,” “Required Senior First Lien Lenders” or “Required Senior Second Lien Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender of the class or classes whose voting rights are directly affected thereby, (vii) release (x) any Guarantor from any of its obligations under the Loan Documents, (y) release
any portion of the Loan Collateral from the lien of the Loan Documents other than as contemplated by the terms of the Loan Documents, or (z) terminate, postpone the scheduled date for payment or decrease the amount of any payment due under the Facility Lease, the Sublease or the Administrative Services Agreement or the Building Loan Agreement to which Facility Lessee is a party, in each case without the written consent of each Lender, or (viii) permit an assignment by Borrower of any rights or obligations under the Loan Documents, without the written consent of each Lender in each instance; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of Administrative Agent hereunder without the prior written consent of Administrative Agent.

(c) Actions by Administrative Agent. Each Lender agrees that any action taken by Administrative Agent at the direction of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in this Agreement), and any action taken by Administrative Agent not requiring consent by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in this Agreement) shall be authorized by and binding upon all Lenders. Borrower acknowledges that the right of the Administrative Agent to grant consent or waivers hereunder or under any Loan Document is subject to consent and approval rights of the Required Lenders, as provided herein and in the Agreement Among Lenders.

11.03 Expenses; Indemnity; Damage Waiver.

(a) Expenses. Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by Administrative Agent, Collateral Agent, the Lenders and each of their Affiliates, including appraisal fees, inspection fees, charges, title and escrow charges, the cost of Intralinks or a similar electronic workspace, and the reasonable fees, charges and disbursements of counsel for Administrative Agent, in connection with the preparation and administration of this Agreement, the other Loan Documents or any extensions, amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), and (ii) all out-of-pocket expenses incurred by Administrative Agent or any Lender, including the fees, charges and disbursements of any counsel for Administrative Agent or any Lender, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section, or in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans, including the cost of the Independent Engineer as provided in Section 3.07(e) hereof.

(b) Borrower Indemnity. Borrower shall indemnify and defend Administrative Agent, Collateral Agent and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, judgments, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, including in enforcing the foregoing indemnification (collectively, “Losses”), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, the other Loan Documents, or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby or thereby, (ii) any Loan or the
use of the proceeds therefrom, or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such Losses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. The foregoing indemnity set forth in this Section 11.03(b) shall not apply (i) with respect to Taxes other than any Taxes that represent losses, claims or damages arising from any non-Tax claim and (ii) to any Losses which are the subject of the Environmental Indemnity Agreement, it being the intention of the parties hereto that Borrower’s liability for environmental matters be governed exclusively by the Environmental Indemnity Agreement and not by this Agreement.

(c) Reimbursement by Lenders. To the extent that Borrower fails to pay any amount required to be paid by it to Administrative Agent under Section 11.03(a) or (b) hereof, each Lender severally agrees to pay to Administrative Agent such Lender’s Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against Administrative Agent in its capacity as such.

(d) Damage Waiver. To the extent permitted by applicable law, no party hereto shall assert, and each such party hereby waives, any claim against any other party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or the use of the proceeds thereof; provided that, nothing in this clause (d) shall relieve Borrower of any obligation it may have to indemnify an Indemnitee against special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

(e) Payment of Amounts Due. All amounts due under this Section 11.03 shall be payable promptly, but in no events later than 30 days after written demand therefor.

11.04 Successors and Assigns.

(a) Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 11.04. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in Section 11.04(c) hereof) and, to the extent expressly contemplated hereby, the Related Parties of each of Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders.
(i) Subject to the conditions set forth in Section 11.04(b)(ii) below, any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of Administrative Agent, provided that no consent of Administrative Agent shall be required for (A) an assignment of any Commitment to an assignee that is a Lender with a Commitment immediately prior to giving effect to such assignment or (B) an Eligible Assignee.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender’s Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to Administrative Agent) shall not be less than $5,000,000 unless Administrative Agent otherwise consents, provided that no such consent of Borrower shall be required if a Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of [****] * ;

(D) the assignee, if it shall not be a Lender, shall deliver to Administrative Agent an Administrative Questionnaire in which the assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about Borrower, any Guarantor, and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee’s compliance procedures and applicable laws, including Federal and state securities laws;

(E) any assignment by a Senior First Lien Lender of an interest in the Senior First Lien Loans to a Second Lien Lender or a Subordinated Lender shall require the consent of the Required Senior First Lien Lenders (excluding the transferring Senior First Lien Lender); and any assignment by Senior Second Lien Lender of an interest in the Senior Second Lien Loans to a Subordinated Lender shall require the consent of the Required Senior Second Lien Lenders (excluding the transferring Senior Second Lien Lender);

*Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
(F) if and so long as the Contract of Sale limits the number of assignments by the Lenders, the assignment so permitted shall be allocated among original Lenders as follows: two to JPMorgan Chase Bank, N.A., two to Special Situations Investing Group II, LLC, and one to Varian Medical Systems International AG.

For the purposes of this Section 11.04(b), the term “Ineligible Institution” have the following meanings:

"Eligible Assignee" means any Person other than an Ineligible Institution.

“Ineligible Institution” means (a) a natural person, (b) a Defaulting Lender, (c) Borrower, any Guarantor, or any of its Affiliates (other than Borrower Profit Participant or its Affiliates), (d) any Person who is not an “Institutional Investor” as defined in the EDC Deed.

(iii) Subject to the terms and conditions of this Agreement, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.08, 3.09, 3.10, 4.16(c) and 11.03 hereof). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 11.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.04(c) hereof.

(iv) Administrative Agent shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive, and Borrower, Administrative Agent, Collateral Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee’s completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 11.04(b) hereof and any written consent to such assignment required by Section 11.04(b) hereof, Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register (and shall promptly upon receipt thereof deliver a copy of same to each Lender (but in no event shall a copy thereof be delivered to Borrower)); provided...
that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 3.03(b), 3.10(d) or 11.03(c), Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section.

(vi) Notwithstanding any of the foregoing to the contrary, no Lender may assign its interest under the Loans to any party without the prior written consent of Borrower, which Borrower may withhold in its sole discretion, if a consequence of such assignment is that at the time of such assignment Borrower would be subjected to additional charges under either of Sections 3.08 or 3.09 hereof. *

(c) Participations.

(i) Any Lender may, without the consent of Borrower or Administrative Agent, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender’s rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged (and in no event shall such Lender be released of any of its obligations hereunder as a result of any participation), (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) Borrower, Administrative Agent, Collateral Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 11.02(b) hereof that affects such Participant. Notwithstanding any of the foregoing to the contrary, no Lender shall sell participations without the prior written consent of Borrower, which Borrower may withhold in its sole discretion, if a consequence of doing so is that Borrower would be subjected to additional charges under either of Sections 3.08 or 3.09 hereof. Participant (A) agrees to be subject to the provisions of Section 3.11 hereof as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 3.08 or 3.09 hereof, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at Borrower’s request and expense, to use reasonable efforts to cooperate with Borrower to effectuate the provisions of Section 3.11(b) hereof with

* Under Lender review.
respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 hereof as though it were a Lender; provided that such Participant agrees to be subject to Sections 3.10(c) and 10.08 hereof as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Loans or other obligations under any Loan Document (the “Participant Register”); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant’s interest in any Commitments, Loans, or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, or other obligation is in registered form under section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(ii) In no event may a Participant be Borrower, any Guarantor or an Affiliate of Borrower or of any Guarantor.

(d) Pledges by Lenders. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

11.05 Counterparts; Integration; Effectiveness.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents and any separate letter agreements with respect to fees paid to Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it shall have been executed by Administrative Agent and when Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(b) Delivery of an executed counterpart of a signature page of this Agreement by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual
executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

11.06 **Severability.** Any provision of this Agreement or any other Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof or thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

11.07 **Right of Set-off.** If a Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, and to the extent permitted under Section 10.08 hereof, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of Borrower against any of and all the obligations of Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have. Notwithstanding the foregoing, each Lender agrees to obtain approval of the Required Lenders (other than any Defaulting Lender) before exercising such rights.

11.08 **Governing Law; Jurisdiction; Consent to Service of Process.**

(a) **Governing Law.** This Agreement shall be construed in accordance with and governed by the internal laws (and not the law of conflicts) of the State of New York, but giving effect to federal laws applicable to national banks.

(b) **Consent to Jurisdiction.** Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any United States Federal or New York State court sitting in the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that
Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against Borrower or its properties in the courts of any jurisdiction.

(c) **Waiver of Objection to Venue.** Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in Section 11.09(b) hereof. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) **Service of Process.** Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 11.01 hereof. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

11.09 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

11.10 **Headings.** Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

11.11 **Confidentiality.** Each of Administrative Agent, Collateral Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates’ directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to the Obligations or the enforcement of rights under the Loan Documents, (f) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (g) with the consent of Borrower, (h) to holders of equity interests in Borrower, or (i) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to Administrative Agent, Collateral
Agent or any Lender on a non-confidential basis from a source other than Borrower. For the purposes of this Section, “Information” means all information received from Borrower relating to Borrower or its business, other than any such information that is available to Administrative Agent, Collateral Agent or any Lender on a non-confidential basis prior to disclosure by Borrower; provided that, in the case of information received from Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

EACH LENDER ACKNOWLEDGES THAT INFORMATION (AS DEFINED IN THIS SECTION) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING BORROWER, ANY GUARANTOR, AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT BORROWER, ANY GUARANTOR, AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.

11.12 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

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11.13 **USA Patriot Act.** Administrative Agent and each Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “**Act**”), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Administrative Agent or such Lender to identify Borrower in accordance with the Act.

11.14 **Administrative Agent Approvals.** With respect to matter under this Agreement requiring the approval or consent of Administrative Agent or any other exercise of discretion by Administrative Agent, Administrative Agent shall exercise its judgment reasonably and in good faith without unreasonable delay after receipt of the necessary information to make a fully informed decision.

11.15 **Replacement Documentation.** Upon receipt of an affidavit of an officer of Administrative Agent or any of the Lenders as to the loss, theft, destruction or mutilation of a Note or any other security document which is not of public record, and, in the case of any such loss, theft, destruction or mutilation, Borrower will issue, in lieu thereof, a replacement Note or other security document in the same principal amount thereof and otherwise of like tenor. In the event that Borrower issues such replacement Note or other security document, the Lender who is the payee on the lost, destroyed, mutilated or stolen Note or security document shall indemnify and hold harmless Borrower from any liability incurred by Borrower in connection with the lost, stolen, destroyed or mutilated Note or security document.

11.16 **Consents and Approvals under Building Loan Documents.** If the Building Loan Agreement and/or any of the other documents evidencing or securing the loans being made pursuant to the Building Loan Agreement (the “**Building Loan Documents**”) contain any provision or requirement that the Administrative Agent’s and/or Lenders’ consent or approval or waiver or determination be obtained by Borrower in connection with any matter, to the extent that such consent or approval or waiver or determination is also required by Administrative Agent and/or Lenders under this Agreement and/or any of the other documents evidencing or securing the Loan (the “**Project Loan Documents**”) in connection with such matter, Administrative Agent’s and/or Lenders’ consent or approval or waiver or determination to such matter hereunder or under any of the Project Loan Documents shall automatically and without any further action be and be deemed to be granted under the Building Loan Agreement and/or the Building Loan Documents, as the case may be; provided, however, that notwithstanding the foregoing, Administrative Agent and/or Lender’s consent to fund any Advance under this Agreement shall not be deemed to constitute, and shall not constitute, Administrative Agent and/or Lender’s consent to fund any Advance (as such term is defined in the Building Loan Agreement) under the Building Loan Agreement.
CONFIDENTIAL TREATMENT REQUESTED – REDACTED COPY

IN WITNESS WHEREOF, the parties hereto have executed this Loan and Security Agreement (Project Loan) as of the day and year first above written.

**MM PROTON I, LLC**,  
a Delaware limited liability company  
By: MM Proton I Investors, LLC,  
a Delaware limited liability company,  
its Managing Member  
By: [****] *  
Name: [****]  
Title: [****]  

**JPMORGAN CHASE BANK, N.A.**,  
as Administrative Agent, Collateral Agent and as a Senior First Lien Lender  
By: [****]  
Name: [****]  
Title: [****]  

**VARIANT MEDICAL SYSTEMS INTERNATIONAL AG**,  
as a Senior Second Lien Lender  
By: [****]  
Name: [****]  
Title: [****]  

**SPECIAL SITUATIONS INVESTING GROUP II, LLC**,  
as a Senior Second Lien Lender  
By: [****]  
Name: [****]  
Title: [****]  

**VARIAN MEDICAL SYSTEMS INTERNATIONAL AG**,  
as a Subordinated Lender  
By: [****]  
Name: [****]  
Title: [****]  

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

[Signature page to Loan and Security Agreement (Project Loan)]
On the ___ day of ______ in the year 2015, before me, the undersigned, a Notary Public in and for said state, personally appeared __________________, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

________________________
Notary Public

On the ___ day of ______ in the year 2015, before me, the undersigned, a Notary Public in and for said state, personally appeared __________________, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

________________________
Notary Public

[Signature page to Loan and Security Agreement (Project Loan)]
On the ___ day of ______ in the year 2015, before me, the undersigned, a Notary Public in and for said state, personally appeared ____________________, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

Notary Public

[Signature page to Loan and Security Agreement (Project Loan)]
## SCHEDULE 1.01

### SENIOR FIRST LIEN LENDERS

<table>
<thead>
<tr>
<th>Name/Address</th>
<th>Commitment</th>
</tr>
</thead>
<tbody>
<tr>
<td>JPMORGAN CHASE BANK, N.A.</td>
<td>$27,300,712</td>
</tr>
<tr>
<td>[****] *</td>
<td></td>
</tr>
<tr>
<td>VARIAN MEDICAL SYSTEMS INTERNATIONAL AG</td>
<td>$27,300,712</td>
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<td>[****]</td>
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</table>

### SENIOR SECOND LIEN LENDER

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<th>Commitment</th>
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<td>SPECIAL SITUATIONS INVESTING GROUP II, LLC</td>
<td>$29,255,439</td>
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### SUBORDINATED LENDER

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<th>Name/Address</th>
<th>Commitment</th>
</tr>
</thead>
<tbody>
<tr>
<td>VARIAN MEDICAL SYSTEMS INTERNATIONAL AG</td>
<td>$13,250,000</td>
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<tr>
<td>[****]</td>
<td></td>
</tr>
</tbody>
</table>

*Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.*

Schedule 1.01
EXHIBIT A

LEGAL DESCRIPTION

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN THE BOROUGH OF MANHATTAN, CITY, COUNTY AND STATE OF NEW YORK BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT A DISTANCE OF 100.00 FEET EAST FROM THE CORNER FORMED BY THE INTERSECTION OF THE EASTERLY SIDE OF THIRD AVENUE (100’ WIDE) AND THE SOUTHERLY SIDE OF EAST 127 TH STREET (60’ WIDE) SAID POINT BEING THE POINT OR PLACE OF BEGINNING;

1. RUNNING THENCE EASTERLY, ALONG THE SOUTHERLY SIDE OF EAST 127 TH STREET, A DISTANCE OF 255.00 FEET TO A POINT;

2. THENCE SOUTHERLY, AT RIGHT ANGLES TO SAID SOUTHERLY SIDE OF EAST 127 TH STREET, A DISTANCE OF 199.83 FEET TO A POINT ON THE NORTHERLY SIDE OF EAST 126 TH STREET (60’ WIDE);

3. THENCE WESTERLY, ALONG SAID NORTHERLY SIDE OF EAST 126 TH STREET, A DISTANCE OF 225.00 TO A POINT;

4. THENCE NORTHERLY, AT RIGHT ANGLES TO SAID NORTHERLY SIDE OF EAST 126 TH STREET, A DISTANCE OF 199.83 FEET TO THE POINT OR PLACE OF BEGINNING.

ENCOMPASSING AN AREA OF 1.170 ACRES, 50,957 SQUARE FEET.
EXHIBIT B
PROJECT BUDGET

(SEE ATTACHED)

[****] *

*Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

B-1
$ __________________

MM PROTON I, LLC, a Delaware limited liability company ("Borrower"), promises to pay to the order of ______________________ ("Lender") ___________________ DOLLARS ($__________________), or if less, the aggregate unpaid principal amount of all Loans made by Lender to Borrower pursuant to the Agreement (as hereinafter defined), together with interest on the unpaid principal amount hereof in the manner set forth in the Agreement. Borrower shall pay on each Interest Payment Date accrued interest on unpaid principal and on the Maturity Date all unpaid principal and all accrued and unpaid interest thereon.

This Note is one of the Notes issued pursuant to, and is entitled to the benefits of, the Loan and Security Agreement (Project Loan) of even date herewith (which, as it may be amended or modified and in effect from time to time, is herein called the “Agreement”), among Borrower, the lenders referenced therein, including Lender, and JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent. Capitalized terms used herein and not otherwise defined herein are used with the meanings attributed to them in the Agreement. Reference is hereby made to the Agreement for a statement of the terms and conditions governing this Note, including the terms and conditions under which this Note may be prepaid or its maturity date accelerated.

This Note evidences the Senior First Lien Loan under the Agreement, which Loan is senior in right of payment to the Senior Second Lien Loan and the Subordinated Loan, in accordance with the terms and priorities set forth in the Loan Agreement and the Agreement Among Lenders.

This Note is secured by liens granted to the Collateral Agent pursuant to the Loan Documents, and reference is made thereto for a statement of the terms, provisions and the priorities to which it is entitled.

MM PROTON I, LLC,

a Delaware limited liability company

By: MM Proton I Investors, LLC,
    a Delaware limited liability company,
    its Managing Manager

By:
Name: [****] *
Title: [****]

*Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
MM PROTON I, LLC, a Delaware limited liability company ("Borrower"), promises to pay to the order of ________________ ("Lender") ___________________ DOLLARS ($__________________), or if less, the aggregate unpaid principal amount of all Loans made by Lender to Borrower pursuant to the Agreement (as hereinafter defined), together with interest on the unpaid principal amount hereof in the manner set forth in the Agreement. Borrower shall pay on each Interest Payment Date accrued interest on unpaid principal and on the Maturity Date all unpaid principal and all accrued and unpaid interest thereon.

This Note is one of the Notes issued pursuant to, and is entitled to the benefits of, the Loan and Security Agreement (Project Loan) of even date herewith (which, as it may be amended or modified and in effect from time to time, is herein called the "Agreement"), among Borrower, the lenders referenced therein, including Lender, and JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent. Capitalized terms used herein and not otherwise defined herein are used with the meanings attributed to them in the Agreement. Reference is hereby made to the Agreement for a statement of the terms and conditions governing this Note, including the terms and conditions under which this Note may be prepaid or its maturity date accelerated.

This Note evidences the Senior Second Lien Loan under the Agreement, which Loan is subordinate in right of payment to the Senior First Lien Loan and senior in right of payment to the Subordinated Loan, all in accordance with the terms and priorities set forth in the Loan Agreement and the Agreement Among Lenders.

This Note is secured by liens granted to the Collateral Agent pursuant to the Loan Documents, and reference is made thereto for a statement of the terms, provisions and the priorities to which it is entitled.

MM PROTON I, LLC,

a Delaware limited liability company

By: MM Proton I Investors, LLC,
a Delaware limited liability company,
its Managing Manager

By:
Name: [****] *
Title: [****]

*Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

C-2
$ ____________________

MM PROTON I. LLC, a Delaware limited liability company ("Borrower"), promises to pay to the order of ____________________________ ("Lender") ____________________ DOLLARS ($__________________), or if less, the aggregate unpaid principal amount of all Loans made by Lender to Borrower pursuant to the Agreement (as hereinafter defined), together with interest on the unpaid principal amount hereof in the manner set forth in the Agreement. Borrower shall pay the principal of and accrued and unpaid interest on the Loans in full on the Maturity Date.

This Note is one of the Notes issued pursuant to, and is entitled to the benefits of, the Loan and Security Agreement (Building Loan) of even date herewith (which, as it may be amended or modified and in effect from time to time, is herein called the "Agreement"), among Borrower, the lenders referenced therein, including Lender, and JPMorgan Chase Bank, N.A., as Administrative Agent and Collateral Agent. Capitalized terms used herein and not otherwise defined herein are used with the meanings attributed to them in the Agreement. Reference is hereby made to the Agreement for a statement of the terms and conditions governing this Note, including the terms and conditions under which this Note may be prepaid or its Maturity Date accelerated.

This Note evidences the Subordinated Loan under the Agreement, which Loan is subordinate in right of payment to the Senior First Lien Loan and the Senior Second Lien Loan, all in accordance with the terms and priorities set forth in the Loan Agreement and the Agreement Among Lenders.

This Note is secured by liens granted to the Collateral Agent pursuant to the Loan Documents, reference is made thereto for a statement of the terms, provisions and the priorities to which it is entitled.

MM PROTON I, LLC,

a Delaware limited liability company

By: MM Proton I Investors, LLC,
a Delaware limited liability company,
its Managing Manager

By:
Name: [****] *
Title: [****]

*Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [Insert name of Assignor] (the “Assignor”) and [Insert name of Assignee] (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement identified below (as amended, the “Loan Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and other rights of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Loan Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: __________________________

2. Assignee: __________________________
   [and is an Affiliate/Approved Fund of [identify Lender]]

3. Borrower(s): __________________________

4. Administrative Agent: __________________________
   , as the administrative agent under the Loan Agreement

5. Credit Agreement: [The [amount] Loan and Security Agreement (Building Loan) dated as of ______ among [name of Borrower(s)], the Lenders parties thereto, [name of Administrative Agent], as Administrative Agent, and the other agents parties thereto]

6. Assigned Interest: Annex 1-1
Facility Assigned | Aggregate Amount of Commitment/Loans for all Lenders | Amount of Commitment/Loans Assigned | Percentage Assigned of Commitment/Loans
---|---|---|---
$ | $ | %
$ | $ | %
$ | $ | %

Effective Date: _____________ , 20___ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The Assignee agrees to deliver to Administrative Agent a completed Administrative Questionnaire in which the Assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about Borrower, the Guarantor, and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the Assignee’s compliance procedures and applicable laws, including Federal and state securities laws.

The terms set forth in this Assignment and Assumption are hereby agreed to:

**ASSIGNOR**

[NAME OF ASSIGNOR]

By: 

Title:

**ASSIGNEE**

[NAME OF ASSIGNEE]

By: 

Title:

[Consented to and] Accepted:

[NAME OF ADMINISTRATIVE AGENT], as Administrative Agent

By: 

Title:
1. Representations and Warranties.

1.1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of Borrower, any of its subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by Borrower, any of its subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. [The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreement, (ii) it satisfies the requirements, if any, specified in the Loan Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Loan Agreement, together with copies of the most recent financial statements delivered pursuant to Section 6 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on Administrative Agent or any other Lender, and (v) attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Loan Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on Administrative Agent, the Assignor 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 the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.
3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Acceptance and adoption of the terms of this Assignment and Assumption by the Assignee and Assignor by Electronic Signature or delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.
Reference is hereby made to the Loan and Security Agreement (Project Loan) dated as of [ ] (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”), among [ ], and each lender from time to time party thereto.

Pursuant to the provisions of Section 3.12 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of Borrower within the meaning of section 881(c)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to Borrower as described in section 881(c)(3)(C) of the Code.

The undersigned has furnished Administrative Agent and Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform Borrower and Administrative Agent, and (2) the undersigned shall have at all times furnished Borrower and Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: ______________________________

Name: ______________________________

Title: ______________________________

Date: ____________, 20[ ]

E-1-1
CONFIDENTIAL TREATMENT REQUESTED – REDACTED COPY

EXHIBIT E-2

FORM OF

U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Loan and Security Agreement (Project Loan) dated as of [ ] (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”), among [ ], and each lender from time to time party thereto.

Pursuant to the provisions of Section 3.12 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of Borrower within the meaning of section 881(c)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to Borrower as described in section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: ____________________________
   Name: _______________________
   Title: ________________________
   Date: __________, ___, 20[ ]
U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Loan and Security Agreement (Project Loan) dated as of [ ] (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”), among [ ], and each lender from time to time party thereto.

Pursuant to the provisions of Section 3.12 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of Borrower within the meaning of section 881(c)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to Borrower as described in section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

(NAME OF PARTICIPANT)

By:

Name:
Title:
Date: _________ __, 20[ ]
Reference is hereby made to the Loan and Security Agreement (Project Loan) dated as of [ ] (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”), among [ ], and each lender from time to time party thereto.

Pursuant to the provisions of Section 3.12 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of Borrower within the meaning of section 881(c)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to Borrower as described in section 881(c)(3)(C) of the Code.

The undersigned has furnished Administrative Agent and Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform Borrower and Administrative Agent, and (2) the undersigned shall have at all times furnished Borrower and Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By:

Name:

Title:

Date: __________ __, 20[ ]
MEMBERS OF CONSORTIUM

ProHealth Proton Center Management LLC
Mount Sinai Proton Holding Company LLC
MSKCC Proton, Inc.
Montefiore Proton Acquisition, LLC
EXHIBIT H

[RESERVED]
EXHIBIT I

FORM OF DRAW REQUEST

REQUEST FOR LOAN ADVANCE

JPMORGAN CHASE BANK, N.A., as Administrative Agent

Draw #:______

Project Name: New York Proton Center
225 East 126 th Street
New York, NY

RE: Request for Loan Advance

1. Reference is made to that LOAN AND SECURITY AGREEMENT (PROJECT LOAN) (the “Agreement”) dated as of this _____ day of ________________, 2015, is by and among MM PROTON I. LLC, a Delaware limited liability company (“Borrower”), JPMORGAN CHASE BANK, N.A., (“JPMorgan”) in its capacity as Administrative Agent (as hereinafter defined) and Collateral Agent (as hereinafter defined), and each party (each, a “Lender”) identified and having its address at the location shown on Schedule 1.01 to the Agreement. Capitalized terms herein, unless otherwise defined, are used as defined in the Agreement.

2. Borrower hereby requests an advance under the Agreement in the aggregate amount of $________, consisting of:

<table>
<thead>
<tr>
<th>Loan</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Senior First Lien Loan</td>
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<tr>
<td>Senior Second Lien Loan</td>
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<tr>
<td>Subordinated Loan</td>
<td></td>
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</tbody>
</table>

3. Borrower acknowledges that this amount is subject to inspection, verification and available funds.

4. Borrower has attached hereto all items required by Section 2.04 of the Agreement as a part of the Draw Package, which is being provided in support of the disbursements requested in this Request for Loan Advance.
5. Borrower represents and warrants to Bank that except as otherwise specifically disclosed in such Draw Package and labeled as a “Disclosure” (a “Disclosure”):
   
a. To Borrower’s knowledge, Borrower is in compliance with all of the conditions to the applicable Advance set forth in this Agreement,

b. All representations and warranties made hereunder or under any of the Loan Documents, or in any certificate or other document executed by Borrower, each Guarantor, or to the best of Borrower’s knowledge any other Loan Party or Project Party as the case may be, and delivered to Administrative Agent pursuant to or in connection with this Agreement, are true and correct in all material respects as of the applicable Borrowing Date except to the extent such representation and warranty is made as of a specified date, in which case such representation and warranty shall have been true and correct on and as of such specified date,

c. To Borrower’s knowledge, no Default or Unmatured Default exists as of the applicable Borrowing Date,

d. Any completed construction is substantially in accordance with the Plans and Specifications,

e. All costs for the payment of which the Lenders have previously advanced funds have in fact been paid to the appropriate vendors and

f. To Borrower’s knowledge, Borrower continues to be in compliance in all material respects with all of the terms, covenants and conditions contained in this Agreement. If Administrative Agent elects to make an Advance notwithstanding matters which are the subject of a Disclosure, the waiver of such matters shall be effective for that Advance only, and unless subsequently waived, such matters must be corrected before the next Advance.

g. All change orders or changes to the project budget have been submitted to and approved by Administrative Agent.

h. All previous Advances have been used solely for the purposes set forth in the Agreement.

i. All of the requested Advance will be used solely to pay obligations set forth on the attachment hereto.

j. There are no liens outstanding against the Facility, except for liens and security interests in favor of Collateral Agent.

k. The Loans are “in balance” as required by Section 2.06 of the Agreement.

6. Disbursement of the requested Advance may be subject to the receipt by the Administrative Agent of the report of the Independent Engineer as required by Section 2.02(j) of the Agreement.

7. Disbursement of the requested Advance may be subject to the receipt by the Administrative Agent of a bring-down endorsement and other endorsements to the Title Policy as required by Section 2.02(k) of the Agreement.
8. Borrower certifies that the statements made herein and in any documents submitted herewith are true and has duly caused this Request for Loan Advance to be signed on its behalf by the undersigned, thereto duly authorized.

9. Borrower requests that this draw be funded and that the disbursement funds be deposited in the Borrower’s Operating Account under the Collateral Account Pledge Agreement.

Date:

MM PROTON I, LLC,
a Delaware limited liability company

By: MM Proton I Investors, LLC,
a Delaware limited liability company,
its Managing Member

By: ____________________________
Name: [****] *
Title: [****]

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
PROJECT MANAGEMENT TEAM MEMBERS

1. [****] *

2. [****]

*Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
EXHIBIT K

[RESERVED]
* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
Exhibit 10.46

CONFIDENTIAL TREATMENT REQUESTED – REDACTED COPY

AMENDMENT NO. ONE TO LOAN AND SECURITY AGREEMENT
(PROJECT LOAN)

THIS AMENDMENT NO. ONE TO LOAN AND SECURITY AGREEMENT (PROJECT LOAN) (the “Amendment”) dated as of this 31st day of July, 2015, is by and among MM PROTON I, LLC, a Delaware limited liability company (“Borrower”), JPMORGAN CHASE BANK, N.A., (“JPMorgan”) in its capacity as Administrative Agent (as hereinafter defined) and Collateral Agent (as hereinafter defined), and each party (each, a “Lender”) identified as a Lender on the signature pages hereto.

RECITALS

WHEREAS, Borrower, JPMorgan and the Lenders are parties to that certain Loan and Security Agreement (Project Loan) dated as of the 15th day of July, 2015 (the “Project Loan Agreement”);

WHEREAS, capitalized terms herein are used as defined in the Project Loan Agreement;

WHEREAS, the parties hereto desire to amend the Project Loan Agreement as provided herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. Amendments.

   a. The definition of “Interest Payment Date” in the Project Loan Agreement is hereby amended and restated as follows:

      “Interest Payment Date” means for each of the Senior First Lien Loans and Senior Second Lien Loans, the first (1st) day of each calendar month, (a) during the period commencing on the first such date to occur at least 30 days after the Closing Date and ending on and including 1st day of the calendar month first preceding the Facility Substantial Completion Date and (b) during the period commencing on the first (1st) day of the fourth full calendar month following the Facility Substantial Completion Date and ending on and including the Maturity Date of such Loan.

   b. Section 2.01(c) of the Project Loan Agreement is hereby amended and restated as follows:

      Each Advance hereunder, including Advances to pay interest on the Senior First Lien Loans and Senior Second Lien Loan pursuant to Section 2.08, hereunder shall consist of Loans solely from the Subordinated Lender until such time as the Subordinated Lender shall have fully funded the Aggregate Subordinated Loan Commitment hereunder and, thereafter, of Senior First Lien Loans and Senior Second Lien Loans ratably in proportion.
to the ratio that the Aggregate Senior First Lien Loan Commitment bears to the Aggregate Senior Second Lien Loan Commitment, with (i) such Senior First Lien Loans made by the Senior First Lien Lenders ratably in proportion to their Applicable Percentage, and (ii) such Senior Second Lien Loans made by the Senior Second Lien Lenders ratably in proportion to their Applicable Percentage.

2. **No Other Amendments.** Except as expressly amended hereby, the Project Loan Agreement is not amended in any respect, and, as so amended hereby, the Project Loan Agreement shall continue in full force and effect.

3. **Incorporation by Reference.** Sections 11.08, 11.09 and 11.10 of the Project Loan Agreement are hereby incorporated by reference as applicable to this Amendment, *mutandis mutandi*.

   [SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. One to Loan and Security Agreement (Project Loan) as of the day and year first above written.

MM PROTON I, LLC,
    a Delaware limited liability company

By: MM Proton I Investors, LLC,
    a Delaware limited liability company, its Managing Member

   By: [****] *
   Name: [****]
   Title: [****]

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent, Collateral Agent and as a Senior First Lien Lender

By: [****]
Name: [****]
Title: [****]

VARIAN MEDICAL SYSTEMS INTERNATIONAL AG
as a Senior First Lien Lender

By: [****]
Name: [****]
Title: [****]

SPECIAL SITUATIONS INVESTING GROUP II, LLC,
as a Senior Second Lien Lender

By: [****]
Name: [****]
Title: [****]

VARIAN MEDICAL SYSTEMS INTERNATIONAL AG
as a Subordinated Lender

By: [****]
Name: [****]
Title: [****]

* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.
## VARIAN MEDICAL SYSTEMS, INC.
### LIST OF SUBSIDIARIES

<table>
<thead>
<tr>
<th>Name</th>
<th>State or Other Jurisdiction of Incorporation</th>
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<tbody>
<tr>
<td>Centella Therapeutics, Inc.</td>
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<td>Varian BioSynergy, Inc.</td>
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<td>Varian Medical Systems UK Holdings Limited</td>
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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. 333-188693, 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 and No. 333-161307) of Varian Medical Systems, Inc. of our report dated November 25, 2015 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/ PricewaterhouseCoopers LLP
San Jose, California
November 25, 2015
CERTIFICATION OF CHIEF EXECUTIVE 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, Dow R. Wilson, 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 25, 2015

/s/ Dow R. Wilson
Dow R. Wilson
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 25, 2015

/s/ Elisha W. Finney

Elisha W. Finney
Executive Vice President, Finance and
Chief Financial 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 October 2, 2015 (the “Report”), I, Dow R. Wilson, President and 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 25, 2015

/s/ Dow R. Wilson

Dow R. Wilson
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 October 2, 2015 (the “Report”), I, Elisha W. Finney, Executive Vice President, Finance and 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 25, 2015

/s/ Elisha W. Finney

Elisha W. Finney
Executive Vice President, Finance and
Chief Financial Officer