ev3 Inc.
Form SC 13D
June 11, 2010

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934

(Amendment No.)*

ev3 INC.

(Name of Issuer)

Common Stock, $0.01 par value per share

(Title of Class of Securities)

26928A200

(CUSIP Number)

John H. Masterson

Senior Vice President and General Counsel

Covidien

15 Hampshire Street, Mansfield, Massachusetts 02048

(508) 261-8000

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

with copies to:

Keith Higgins

Ropes & Gray LLP

One International Place

Boston, Massachusetts 02110

(617) 951-7000

June 1, 2010

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box. ¨

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person s initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (Act) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

SCHEDULE 13D

CUSIP No. 26928A200

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only)

Covidien plc

98-0624794

2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a) ¨ (b) x

3. SEC Use Only

4. Source of Funds (See Instructions)

AF, BK

5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)

..

6. Citizenship or Place of Organization

Ireland

Number of Shares Beneficially Owned by Each Reporting Person	7.	Sole Voting Power
	8.	Shared Voting Power 22,674,168
	9.	Sole Dispositive Power
	10.	Shared Dispositive Power

With

22,674,168

11. Aggregate Amount Beneficially Owned by Each Reporting Person

22,674,168

12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)

..

13. Percent of Class Represented by Amount in Row (11)

19.8%

14. Type of Reporting Person (See Instructions)

CO, HC

SCHEDULE 13D

CUSIP No. 26928A200

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only)

Covidien International Finance S.A.

98-0518567

2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a) ¨ (b) x

3. SEC Use Only

4. Source of Funds (See Instructions)

AF, BK

5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)

..

6. Citizenship or Place of Organization

Luxembourg

Number of Shares Beneficially Owned by Each Reporting Person	7. Sole Voting Power	
	8. Shared Voting Power	22,674,168
	9. Sole Dispositive Power	
	10. Shared Dispositive Power	

With

22,674,168

11. Aggregate Amount Beneficially Owned by Each Reporting Person

22,674,168

12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)

..

13. Percent of Class Represented by Amount in Row (11)

19.8%

14. Type of Reporting Person (See Instructions)

CO, HC

SCHEDULE 13D

CUSIP No. 26928A200

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only)

Covidien Group S.a.r.l.

98-0202595

2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a) ¨ (b) x

3. SEC Use Only

4. Source of Funds (See Instructions)

WC, BK

5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)

..

6. Citizenship or Place of Organization

Luxembourg

Number of Shares Beneficially Owned by Each Reporting Person	7. Sole Voting Power	
	8. Shared Voting Power	22,674,168
	9. Sole Dispositive Power	
	10. Shared Dispositive Power	

With

22,674,168

11. Aggregate Amount Beneficially Owned by Each Reporting Person

22,674,168

12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)

..

13. Percent of Class Represented by Amount in Row (11)

19.8%

14. Type of Reporting Person (See Instructions)

CO

SCHEDULE 13D

CUSIP No. 26928A200

1. Names of Reporting Persons. I.R.S. Identification Nos. of above persons (entities only)

COV Delaware Corporation

27-2709328

2. Check the Appropriate Box if a Member of a Group (See Instructions)

(a) ¨ (b) x

3. SEC Use Only

4. Source of Funds (See Instructions)

AF, BK

5. Check if Disclosure of Legal Proceedings Is Required Pursuant to Items 2(d) or 2(e)

..

6. Citizenship or Place of Organization

Delaware

Number of Shares Beneficially Owned by Each Reporting Person	7. Sole Voting Power	
	8. Shared Voting Power	22,674,168
	9. Sole Dispositive Power	
	10. Shared Dispositive Power	

With

22,674,168

11. Aggregate Amount Beneficially Owned by Each Reporting Person

22,674,168

12. Check if the Aggregate Amount in Row (11) Excludes Certain Shares (See Instructions)

..

13. Percent of Class Represented by Amount in Row (11)

19.8%

14. Type of Reporting Person (See Instructions)

CO

ITEM 1. SECURITY AND ISSUER.

This Statement on Schedule 13D relates to the Common Stock, $0.01 par value per share of ev3 Inc. (*ev3*), a Delaware corporation. The principal executive offices of ev3 are located at 3033 Campus Drive, Plymouth, MN 55441.

ITEM 2. IDENTITY AND BACKGROUND.

This Statement is being jointly filed by Covidien plc, Covidien International Finance S.A., Covidien Group S.a.r.l. and COV Delaware Corporation (the *Reporting Persons*) pursuant to Rule 13d-1 under the Securities and Exchange Act of 1934, as amended (the *Act*). Set forth below is certain information with respect to each Reporting Person.

Covidien plc

Covidien plc, an Irish company, is a publicly held, global healthcare company focused on the development, manufacture and sale of healthcare products for use in clinical and home settings. Covidien plc operates its businesses through three segments: Medical Devices, Pharmaceuticals and Medical Supplies. Covidien plc s principal place of business and principal office is located at Cherrywood Business Park, Block G, First Floor, Loughlinstown, Co. Dublin, Ireland.

To the best of Covidien plc s knowledge as of the date hereof, set forth in Schedule I to this Schedule 13D and incorporated herein by reference is the following information with respect to each director and executive officer of Covidien plc:

(1) name;

(2) business address;

(3) present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is conducted; and

(4) citizenship.

During the last five years, neither Covidien plc nor, to the best of its knowledge, any of its directors or executive officers has been (1) convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (2) a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding has been or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

Covidien International Finance S.A. (CIFSA)

CIFSA, a Luxembourg corporation, is a wholly-owned subsidiary of Covidien plc. CIFSA is a holding company established in December 2006 to directly and indirectly own substantially all of the operating subsidiaries of Covidien plc, to issue notes and to perform treasury operations for Covidien plc. Otherwise, CIFSA conducts no independent business. CIFSA s principal place of business and principal office is located at 3b Bld Prince Henri, L-1724, Luxembourg.

To the best of the knowledge CIFSA as of the date hereof, set forth in Schedule I to this Schedule 13D and incorporated herein by reference is the following information with respect to each director of CIFSA:

(1) name;

(2) business address;

(3) present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is conducted; and

(4) citizenship.

During the last five years, neither CIFSA nor, to the best of its knowledge, any of its directors has been (1) convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (2) a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding has been or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws. The managing directors of CIFSA are the functional equivalents of executive officers.

Covidien Group S.a.r.l. (Covidien Group)

Covidien Group is a company duly formed under the laws of Luxembourg. Covidien Group is a wholly-owned subsidiary of CIFSA and owns several operating subsidiaries of Covidien plc. Covidien Group s principal place of business and principal office is located at 3b Bld Prince Henri, L-1724, Luxembourg.

To the best of the knowledge Covidien Group as of the date hereof, set forth in Schedule I to this Schedule 13D and incorporated herein by reference is the following information with respect to each manager of Covidien Group:

(1) name;

(2) business address;

(3) present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is conducted; and

(4) citizenship.

During the last five years, neither Covidien Group nor, to the best of its knowledge, any of its managers has been (1) convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (2) a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding has been or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws. The managers of Covidien Group are the functional equivalents of directors and the general managers of Covidien Group are the functional equivalents of executive officers.

COV Delaware Corporation (Purchaser)

Purchaser, a Delaware corporation, is a direct wholly-owned subsidiary of Covidien Group and has not conducted any business other than in respect to the potential acquisition of all outstanding capital stock of ev3. Purchaser s principal place of business and principal office is 15 Hampshire Street, Mansfield, MA 02048.

To the best of Purchaser s knowledge as of the date hereof, set forth in Schedule I to this Schedule 13D and incorporated herein by reference is the following information with respect to each director and executive officer of Purchaser:

(1) name;

(2) business address;

(3) present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is conducted; and

(4) citizenship.

During the last five years, neither Purchaser nor, to the best of its knowledge, any of its directors or executive officers has been (1) convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (2) a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding has been or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION.

On June 1, 2010, Covidien Group, Purchaser and ev3 entered into an Agreement and Plan of Merger (the *Merger Agreement*) pursuant to which Purchaser will commence a tender offer (the *Offer*) to acquire (i) all of the issued and outstanding common stock, $0.01 par value per share, of ev3 (the *Shares*), at $22.50 per share, paid to the seller, in cash for each outstanding Share (the *Offer Price*) less any applicable withholding taxes and without payment of interest, and, subject to the satisfaction or waiver of the conditions set forth in the Offer and the Merger Agreement, after consummation of the Offer, Purchaser will merge with and into ev3 (the *Merger*), whereupon Purchaser s separate corporate existence will cease and ev3 will continue as the surviving corporation and as a wholly owned subsidiary of Covidien Group.

As an inducement to enter into the Merger Agreement, and in consideration thereof, Covidien Group and Purchaser entered into a Tender and Voting Agreement (the *Tender and Voting Agreement*), dated as of the date of the Merger Agreement, with Warburg, Pincus Equity Partners, L.P., Warburg, Pincus Netherlands Equity Partners I, C.V., and Warburg, Pincus Netherlands Equity Partners III, C.V. (each, a *Stockholder* and, collectively, the *Stockholders*). Pursuant to the Tender and Voting Agreement, the Stockholders agreed to tender in the Offer 27,151,570 Shares owned by the Stockholders (approximately 24% of the Shares outstanding as of June 7, 2010) and not to withdraw such tender unless the Offer shall have been terminated in accordance with its terms.

Pursuant to the Tender and Voting Agreements, each Stockholder has irrevocably appointed Covidien Group as proxy for the Stockholder to vote an aggregate of 22,674,168 Shares (approximately 19.8% of the Shares outstanding as of June 7, 2010) as to which such Stockholder has voting power and in Stockholder s name, place and stead, at any annual, special or other meeting or action of the shareholders of ev3, as applicable, or at any adjournment thereof, whether before or after the time at which Purchaser first accepts any Shares for payment pursuant to the Offer, solely for the adoption of the Merger Agreement. Additionally, the Stockholders granted Covidien Group an irrevocable option (the *Purchase Option*) to purchase all right, title and interest of the Stockholders in and to the 22,674,168 Shares held by the Stockholders, with a price per share equal to the Offer Price. Covidien Group may exercise the Purchase Option in whole, but not in part, if, but only if, (a) Purchaser has acquired Shares pursuant to the Offer and (b) Stockholder has failed to tender into the Offer 22,674,168 Shares or has withdrawn the tender of 22,674,168 Shares into the Offer in breach of Stockholders Tender and Voting Agreement. Covidien Group may exercise the Purchase Option at any time within the 60 days following the date when such Purchase Option becomes exercisable.

Shared dispositive power with respect to 22,674,168 Shares owned by the Stockholders may be deemed to have been acquired through execution of the Tender and Voting Agreement. Covidien Group has not expended any funds in connection with the execution of the Tender and Voting Agreement, except for the transaction expenses (funded from Covidien Group s working capital) otherwise to be incurred in connection with the Offer and the Merger.

Covidien Group and Purchaser estimate that, if Purchaser acquires all of the Shares (on a fully-diluted basis) pursuant to the Offer, the total cash amount required to purchase such Shares and to cover estimated fees and expenses will be approximately U.S. $2.72 billion. Covidien Group or one of its affiliates will provide all funding required by Purchaser in connection with the Offer from a combination of (i) cash on hand and (ii) a senior unsecured term loan facility in an aggregate amount not to exceed $1.25 billion (the *Facility*)

CIFSA received a debt commitment letter, dated June 1, 2010 (as amended by the Joinder Agreement to Commitment Letter dated June 11, 2010, the *Debt Commitment Letter*), from Morgan Stanley Senior Funding, Inc. (*MSSF*) and the Additional Commitment Parties (as defined therein, and together with MSSF the *Commitment Parties*), pursuant to which, subject to the terms and conditions set forth therein, in connection with the Offer and the Merger, the Commitment Parties have committed to provide the Facility. Under the Debt Commitment Letter, MSSF has the right to syndicate all or a portion of its commitments to one or more financial institutions or other lenders (along with MSSF, such institutions and lenders are collectively referred to as the *Lenders*) which are, until the date that is 75 days after the date of the Debt Commitment Letter, subject to CIFSA s approval in its sole discretion and thereafter will be selected by MSSF in consultation with CIFSA, provided that CIFSA shall have a consent right if such lender is not a commercial or investment bank whose senior, unsecured, long-term indebtedness has an investment grade rating by not less than two of Standard & Poor Ratings Services, Moody s Investor Service, Inc. or Fitch, Inc. Any such syndication will be arranged by MSSF, as the sole lead arranger and sole bookrunner.

The documentation governing the Facility has not been finalized and, accordingly, the actual terms of the Facility may differ from those described in this Schedule 13D.

The conditions precedent to the incurrence of loans under the Facility consist of, among others:

(x) there shall not have occurred since September 25, 2009 any event, development or circumstance that has had or could reasonably be expected to have a material adverse effect on the consolidated financial condition, business or operations of Covidien plc and its subsidiaries taken as a whole, and (y) there not occurring and be continuing since the date of the Debt Commitment Letter, an Acquired Business Material Adverse Effect (as defined below). An Acquired Business Material Adverse Effect is any material adverse change in, or material adverse effect on, the business, financial condition or results of operations of ev3 and its subsidiaries, taken as a whole; provided, however, that certain events and circumstances will not be taken into account in determining whether there has been or will be, an Acquired Business Material Adverse Effect, including, without limitation, changes in general economic conditions or financial markets to the extent they have not had, or would reasonably be expected not to have, a materially disproportionate effect on ev3 and its subsidiaries relative to other companies in the same industry, changes resulting from the execution or announcement of the Merger Agreement, force majeure events, changes in generally accepted accounting principles or in the accounting rules and regulations, change in law, the effects of any legal proceedings made or brought by stockholders of either Covidien plc or ev3 against either Covidien plc or the ev3 asserting allegations of breach of fiduciary duty relating to the Merger Agreement or violations of securities laws in connection with the Schedule 14D-9, the proxy statement of ev3, if any, and each other document required to be filed by ev3 with the Securities and Exchange Commission (the *SEC*) or required to be distributed or otherwise disseminated to all holders of Shares in connection with the transactions contemplated by the Merger Agreement; any action required to comply with the rules and regulations of the SEC or required by the Merger Agreement, any decrease in the market price or trading volume of common stock of ev3, any failure to meet any projections, or any fluctuations in foreign currency exchange rates;

the negotiation, execution and delivery on or before December 31, 2010 of definitive documentation for the Facility, consistent with the terms of the Debt Commitment Letter and the term sheet therein;

(i) all of the conditions precedent to the consummation of the Offer shall have been satisfied in accordance with the Offer to Purchase, the Letter of Transmittal and the Tender Offer Statement on Schedule TO relating to the Offer (such documents, including all exhibits thereto and as they may be amended, supplemented or otherwise modified from time to time, are collectively referred to herein as the *Tender Offer Documents* , which shall be reasonably satisfactory to MSSF) and the Merger Agreement as in effect on the date of the Debt Commitment Letter and (ii) no provision of any Tender Offer Document or the Merger Agreement shall have been waived, amended, supplemented or otherwise modified in an manner materially adverse to the interests of the Lenders (without the prior written consent of MSSF);

the Lenders have received (i) audited consolidated financial statements of Covidien plc and ev3 for the three most recent fiscal years ended at least 90 days prior to the date on which all conditions precedent to the consummation of the Offer are satisfied or waived (the *Effective Date*), and (ii) unaudited interim consolidated financial statements of Covidien plc and ev3 for each of the first three quarterly periods subsequent to the date of the latest financial statements delivered pursuant to clause (i) of this paragraph and ended at least 45 days prior to the Effective Date;

the Commitment Parties have received all fees required to be paid on, and all expenses for which invoices have been presented at least one business day prior to, the Effective Date;

the Lenders have received the following: (a) customary legal opinions from (i) counsel to the CIFSA and (ii) local counsel to Covidien plc, (b) customary resolutions and other evidence of authority, (c) customary officers certificates, (d) good standing certificates (to the extent applicable) in the jurisdiction of organization of CIFSA, Covidien plc and Covidien Ltd., (e) a customary certificate from the chief financial officer of Covidien plc with respect to the solvency (on a consolidated basis) of Covidien plc and its subsidiaries as of the Effective Date, (f) if requested by any Lender at least two business days prior to the Effective Date, a promissory note of CIFSA, (g) a borrowing notice and (h) all documentation and other information reasonably requested by MSSF or any Lender under applicable know your customer and anti-money laundering rules and regulations, including the PATRIOT Act (each of the documents referred to in the foregoing clauses (a), (b), (c), (e) and (g) shall be in form and substance reasonably satisfactory to MSSF);

there exists no injunction or other form of temporary restraining order with respect to the financing for the Offer and the Merger; and

MSSF shall have received confirmation that not less than two of the following ratings shall have been obtained with respect to the senior, unsecured, long-term indebtedness for borrowed money of CIFSA that is not guaranteed by any other person other than Covidien Ltd. and Covidien plc or subject to any other credit enhancement: (i) at least BBB- by S&P, (ii) at least Baa3 by Moody s and (iii) at least BBB- from Fitch, in each case with a stable or better outlook, which ratings and outlooks shall have been reaffirmed within 30 days prior to the Effective Date.

The Facility will accrue interest at a rate per annum, at the election of CIFSA, equal to either (a) an alternate base rate or (b) an adjusted LIBO rate for a one, two, three or six month interest period, in each case plus a margin which fluctuates based upon our ratings from Standard & Poor Ratings Services, Moody s Investor Service, Inc. or Fitch, Inc. The alternate base rate will be the highest of (i) the federal funds effective rate from time to time plus 1/2 of 1.00%, (ii) the rate of interest per annum from time to time published in the Money Rates section of The Wall Street Journal as being the Prime Lending Rate or, if more than one rate is published as the Prime Lending Rate, then the highest of such rates (each change in the Prime Lending Rate to be effective as of the date of publication in The Wall Street Journal of a Prime Lending Rate that is different from that published on the preceding domestic business day); provided, that, in the event that The Wall Street Journal shall, for any reason, fail or cease to publish the Prime Lending Rate, MSSF (acting in a commercially reasonable manner and in good faith) shall choose a reasonably comparable index or source to use as the basis for the Prime Lending Rate and (iii) the one month Adjusted LIBO Rate plus 1.00%. The adjusted LIBO rate will be determined by reference to settlement rates established for deposits in dollars in the London interbank market for a period equal to the interest period of the loan and the maximum reserve percentages established by the Board of Governors of the U.S. Federal Reserve to which our lenders are subject. If the Facility is not repaid in full within three months following the Effective Date, the applicable margin will increase by 25 basis points on the date that is 90 days following the Effective Date, and shall increase by an additional 25 basis points on the date that is 180 days following the Effective Date and by an additional 50 basis points on the date that is 270 days following the Effective Date.

It is anticipated that borrowings under the Facility will be required to be prepaid in amounts equal to:

100% of the net proceeds of any sale or issuance of equity or issuance of debt securities or incurrence of indebtedness (other than proceeds received from (i) borrowings under existing syndicated credit facility commitments, (ii) commercial paper issuances, (iii) any refinancing of any existing indebtedness (other than (A) bilateral credit facilities in excess of $50 million in aggregate and (B) syndicated credit facilities) of Covidien plc or any of its subsidiaries to the extent the maturity date of such refinanced indebtedness is no more than 120 days from the date of such refinancing, (iv) any bilateral credit facilities not exceeding $200 million in aggregate entered into for working capital purposes or otherwise in the ordinary course of business, (v) any equity issuance pursuant to director or employee stock or option plans and similar arrangements, (vi) any equity issued as consideration for an acquisition or investment, which issuance does not result in cash proceeds and (vii) certain other customary exceptions to be agreed), or the committed amount of any new syndicated credit facilities incurred (including the amount by which any such existing commitments under CIFSA s existing syndicated credit facilities is increased) by Covidien plc or any of its subsidiaries; and

100% of the net proceeds of any sale or other disposition (including as a result of casualty or condemnation) by Covidien plc or any of its subsidiaries of any assets (except for the sale of inventory in the ordinary course of business and certain other dispositions to be agreed on) provided, that no such proceeds shall be required to be applied to repay the Facility or reduce any commitments as described above unless they exceed $50 million for any individual transaction or series of related transactions or $150 million in the aggregate following the date of the Debt Commitment Letter.

The Facility may be prepaid at par by CIFSA without premium or penalty (other than the payment of customary breakage amounts) in minimum amounts to be agreed upon. Any loans prepaid pursuant to the Facility may not be reborrowed.

The Facility will be subject to standard terms and conditions for financings of this kind, including standard representations and warranties, affirmative and negative covenants and events of default.

The foregoing summary of the Facility and the Debt Commitment Letter does not purport to be a complete description of the terms and conditions of these agreements and is qualified in its entirety by reference to the Debt Commitment Letter, which has been filed as Exhibit 3 to this Schedule 13D. Reference is made to such exhibit for a more complete description of the terms and conditions of the Facility, and such exhibit is incorporated herein by reference. If CIFSA draws on the Facility in connection with the acquisition of ev3, CIFSA intends to repay such borrowings under the Facility from working capital or refinance such borrowings with commercial paper or other permanent financing.

A copy of the Merger Agreement is attached as Exhibit 2 to this Schedule 13D. A form of the Tender and Voting Agreement is included as Annex II to the Merger Agreement. References to, and descriptions of, the Merger Agreement and the Tender and Voting Agreement as set forth above in this Item 3 are qualified in their entirety by reference to the copies of the Merger Agreement and the form of Tender and Voting Agreement included as Exhibit 2 to this Schedule 13D and which are incorporated herein in their entirety by this reference. The information set forth and/or incorporated by reference in Item 6 is hereby incorporated by reference into this Item 3.

ITEM 4. PURPOSE OF TRANSACTION.

The information set forth and/or incorporated by reference in Items 2 and 3 is hereby incorporated by reference into this Item 4.

The purpose of entering into the Merger Agreement and the Tender and Voting Agreement, and the purpose of the Offer, is to enable Covidien Group and Purchaser to acquire control of, and ultimately the entire equity interest in, ev3. The Offer is conditioned upon, among other things, there being validly tendered and not withdrawn prior to the expiration of the Offer (as extended in accordance with the Merger Agreement) that number of Shares which, when added to any Shares owned by Purchaser and Covidien Group or their subsidiaries, or with respect to which Purchaser and Covidien Group have, directly or indirectly, voting power, represents at least a majority of the then issued and outstanding Shares (which, for purposes of such calculation, includes Shares issuable pursuant to outstanding options and other rights, other than options or other rights that would be exercisable only after December 31, 2010), and the applicable waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and certain antitrust laws in foreign jurisdictions, having expired or been terminated. Subject to the terms of the Merger Agreement and applicable law, Purchaser reserves the right to withdraw the Offer and to not take up and pay for any Shares deposited in the Offer unless each of the conditions to the Offer is satisfied or, where permitted, waived at or prior to the expiration of the Offer.

Pursuant to the Merger Agreement, ev3 has granted Purchaser an irrevocable option (the *Top-Up Option*) to purchase at a price per share equal to the Offer Price that number of newly issued Shares (the *Top-Up Shares*) equal to the lowest number of Shares that, when added to the number of Shares owned by Purchaser, Covidien Group or their subsidiaries at the time of exercise of the Top-Up Option (including all Shares validly tendered and not properly withdrawn in the Offer at the time the Shares are accepted for payment but excluding Shares tendered pursuant to guaranteed delivery procedures that have not yet been delivered), will constitute one Share more than 90% of all of the outstanding Shares (assuming the issuance of the Top-Up Shares). The Top-Up Option must be exercised if, following the time we accept the Shares for payment in the Offer, 75% or more of the Shares outstanding (excluding Shares tendered pursuant to guaranteed delivery procedures that have not yet been delivered) will be owned by Purchaser or Covidien Group and each of their subsidiaries and after giving effect to the exercise of the Top-Up Option, Purchaser, Covidien Group and their subsidiaries would own one Share more than 90% of the Shares outstanding (after giving effect to the issuance of the Top-Up Shares but excluding Shares tendered pursuant to guaranteed delivery procedures that have not yet been delivered). Purchaser may exercise the Top-Up Option once at any time following the time at which Purchaser first accepts any Shares for payment pursuant to the Offer. However, the Top-Up Option will not be exercisable for a number of Shares in excess of the Shares authorized and unissued at the time of exercise of the Top-Up Option (less the maximum number of Shares potentially necessary for issuance with respect to all outstanding stock options, restricted stock, restricted stock units or other obligations of ev3) and is subject to the conditions, unless waived by ev3, that no provision of any applicable law and no applicable order or injunction or other judgment will prohibit the exercise of the Top-Up Option or the delivery of the Top-Up Shares The purpose of this provision is to facilitate a short-form merger following completion of the Offer.

If the conditions of the Offer are satisfied or waived and Purchaser takes up and pays for any Shares validly deposited under the Offer, Purchaser intends to acquire any Shares not deposited under the Offer through a merger

under Delaware General Corporation Law, or through a subsequent offering period, in each case for cash consideration per Share equal to the Offer Price. The exact timing and details of any such transaction will depend upon a number of factors, including the number of Shares acquired pursuant to the Offer. Although Purchaser intends to effect such a transaction generally on the terms described herein, it is possible that such a transaction may be delayed or abandoned or may be proposed on different terms.

The Merger Agreement provides that, upon the payment by Purchaser for any Shares accepted by Purchaser for payment pursuant to the Offer and from time to time thereafter so long as Covidien Group directly or indirectly beneficially owns not less than a majority of the issued and outstanding Shares, Covidien Group shall be entitled to designate up to such number of directors, rounded up to the next whole number, on ev3 s board of directors as is equal to the product of (i) the total number of directors on the ev3 board of directors (giving effect to the election or appointment of any additional directors designated by Covidien Group) and (ii) the percentage that the number of Shares beneficially owned by Covidien Group and/or Purchaser (including Shares accepted for payment in the Offer and the Shares purchased by exercise of the Top-Up Option, if any) bears to the total number of Shares outstanding, and ev3 will, upon request by Purchaser, promptly increase the size of ev3 s board of directors or use its reasonable best efforts to secure the resignations of such number of directors as is necessary to provide Purchaser with such level of representation and shall cause Purchaser s designees to be so elected or appointed. At such time, ev3 will, upon Covidien Group s request, also cause individuals designated by Purchaser to constitute the same percentage as such individuals represent of the entire ev3 board of directors on (i) each committee of ev3 s board of directors (other than any committee of such board of directors comprised solely of those directors who were directors of ev3 as of the date of the Merger Agreement established to take action under the Merger Agreement); (ii) each board of directors and each committee thereof of each wholly owned subsidiary of ev3 and (iii) the designees, appointees or other similar representatives of ev3 on each board of directors (or other similar governing body) and each committee thereof of each non-wholly owned subsidiary of ev3. Following the designation of Covidien Group s director designees until the effective time of the Merger, Covidien Group and Purchaser have agreed to use their reasonable best efforts to cause the ev3 board to include at least 3 Continuing Directors (as defined below) and to cause the board committees of ev3 and its subsidiaries to include at least 1 Continuing Director. A *Continuing Director* is a member of the ev3 board as of the date of the Merger Agreement or a person selected by the Continuing Directors then in office, each of whom is an independent director under Nasdaq rules. The approval of a majority of Continuing Directors (or the sole Continuing Director if there shall be only 1 Continuing Director) is required in order to (i) amend, modify or terminate the Merger Agreement, or agree or consent to any amendment, modification or termination of the Merger Agreement, in any case on behalf of ev3, (ii) extend the time for performance of, or waive, any of the obligations or other acts of the Covidien Group or Purchaser under the Merger Agreement, (iii) waive or exercise any of the ev3 s rights under the Merger Agreement, (iv) waive any condition to ev3 s obligations under the Merger Agreement, (v) amend ev3 s certificate of incorporation or bylaws, (vi) authorize any agreement between ev3 or any of ev3 s subsidiaries, on the one hand, and Covidien Group, Purchaser or any of their affiliates, on the other hand, or (vii) make any other determination with respect to any action to be taken or not to be taken by or on behalf of ev3 relating to the Merger Agreement or the transactions contemplated by the Merger Agreement.

The Merger Agreement provides that during the period from the date of the Merger Agreement until the earlier of the termination of the Merger Agreement pursuant to its terms or the time we first accept any Shares for payment pursuant to the Offer, ev3 will, except to the extent that Covidien Group otherwise consents in writing, except as otherwise expressly provided in the Merger Agreement, or except as may be required by law, carry on its business in the ordinary and usual course in all material respects consistent with past practice. Without limiting the generality of the foregoing, without the prior written consent of Covidien Group (such consent not to be unreasonably withheld, conditioned or delayed) and except as otherwise specifically provided in, or in furtherance of any action permitted to be taken by, the Merger Agreement, during the period from the date of the Merger Agreement and continuing until the earlier of the termination of the Merger Agreement pursuant to its terms or the time we first accept any Shares for payment pursuant to the Offer, ev3 has agreed to:

Use reasonable best efforts to preserve intact its current business organization;

Use reasonable best efforts to maintain its relationships with customers, suppliers and others having business dealings with it;

Use reasonable best efforts to notify and consult with Covidien Group promptly (i) after receipt of any material communication from any governmental entity or inspections of any manufacturing or clinical trial site and before giving any material submission to a governmental entity and (ii) prior to making any material change to a study protocol, adding new trials, making any material change to a manufacturing plan or process, or making a material change to the development timeline for any of its product candidates or programs;

Use reasonable best efforts to preserve intact and keep available the services of present employees of ev3 and its subsidiaries;

Use reasonable best efforts to keep in effect casualty, product liability, workers compensation and other insurance policies in coverage amounts substantially similar to those in effect at the date of the Merger Agreement;

Use reasonable best efforts to preserve and protect the intellectual property owned by ev3 and its subsidiaries;

Not amend its certificate of incorporation or bylaws;

Not issue, deliver, sell, dispose of, pledge or otherwise encumber, or authorize or propose the issuance, sale, disposition or pledge or other encumbrance of (i) any shares of capital stock of any class or any other ownership interest of ev3 or any of its subsidiaries, or any securities or rights convertible into, exchangeable for, or evidencing the right to subscribe for any shares of capital stock or any other ownership interest of ev3 or any of its subsidiaries, or any rights, warrants, options, calls, commitments or any other agreements of any character to purchase or acquire any shares of capital stock or any other ownership interest of ev3 or any of its subsidiaries or any securities or rights convertible into, exchangeable for, or evidencing the right to subscribe for, any shares of capital stock or any other ownership interest of ev3 or any of its subsidiaries, or (ii) any other securities of ev3 or any of its subsidiaries in respect of, in lieu of, or in substitution for, Shares outstanding on the date of the Merger Agreement, except for (A) Shares to be issued or delivered (1) pursuant to any of ev3 s equity or stock plans for its employees (the *Company Stock Plans*), (2) in connection with acquisitions consistent with past practice or (3) pursuant to the Agreement and Plan of Merger dated as of June 2, 2009, by and among ev3, Starsky Merger Sub, Inc., Starsky Acquisition Sub, Inc., Chestnut Medical Technologies, Inc. and CMT SR, Inc., (B) the issuance, grant or delivery of up to an aggregate amount of 750,000 equity awards to certain of its employees, directors and consultants or (C) the exercise of the Top-Up Option;

Not redeem, purchase or otherwise acquire, or propose to redeem, purchase or otherwise acquire, any outstanding Shares, other than (x) from holders of options to purchase Shares in full or partial payment of the exercise price, or (y) in connection with the withholding of taxes payable by any holder of options to purchase shares, restricted stock or restricted stock units upon the exercise, settlement or vesting thereof, in each case to the extent required or permitted under the terms of such equity awards or any applicable Company Stock Plan;

Not split, combine, subdivide or reclassify any Shares or declare, set aside for payment or pay any dividend or other distribution in respect of any Shares or otherwise make any payments to stockholders in their capacity as such; provided that this prohibition does not apply to dividends or distributions declared, set aside for payment or paid by wholly owned subsidiaries of ev3 to ev3 or any other wholly owned subsidiary of ev3;

Not adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of ev3 or any of its subsidiaries, other than the Offer, the Merger or the transactions contemplated by the Merger Agreement;

Not acquire, sell, lease, dispose of, pledge or encumber any assets, other than (i) acquisitions in existing or related lines of business of ev3 or any of its subsidiaries as to which the aggregate consideration for all such acquisitions does not exceed $2,000,000, (ii) sales, leases, dispositions, pledges or encumbrances of assets with an aggregate fair market value of less than $2,000,000, or (iii) sales or transfers of inventory in the ordinary course of business;

(i) other than in the ordinary course of business consistent with past practice, not incur any indebtedness for borrowed money in addition to that incurred as of the date of the Merger Agreement or guarantee any such indebtedness or make any loans, advances or capital contributions to, or investments in, any other person or entity, other than (A) to ev3 or any wholly owned subsidiary of ev3 or (B) strategic investments as to which the aggregate consideration for all such investments does not exceed $2,000,000, or (ii) not pay, discharge or satisfy any material claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction of (1) in the ordinary course of business and consistent with past practice, liabilities reflected or reserved against in ev3 s consolidated balance sheet as of April 4, 2010, (2) liabilities incurred in the ordinary course of business since April 4, 2010, or (3) all amounts under the Loan and Security Agreement, dated June 28, 2006, by and among Silicon Valley Bank and certain of ev3 s subsidiaries;

Not change the compensation payable to any officer, director, employee, agent or consultant, or enter into any employment, severance, retention or other agreement or arrangement with any officer, director, employee, agent or consultant of ev3 or any of its subsidiaries, or adopt, or increase the benefits (including fringe benefits) under, any employee benefit plan or otherwise, except (A), in each case, as required by law or in accordance with existing agreements provided to Covidien Group and disclosed in the Disclosure Schedule to the Merger Agreement and (B), in the case of compensation for employees, agents or consultants who are not officers or directors, in the ordinary course of business consistent with past practice unless the total compensation payable to such employee, agent or consultant (including base, bonus opportunity at target, equity, sign-on bonus and relocation) equals or exceeds $200,000; or make any loans to any of its directors, officers or employees, agents or consultants, or make any change in its existing borrowing or lending arrangements for or on behalf of any such persons pursuant to an employee benefit plan or otherwise;

except as may be contemplated by the Merger Agreement, in the ordinary course of business consistent with past practices or to the extent required or advisable to comply with applicable law, not terminate or materially amend any ev3 employee benefit plans;

Not change in any material respect any of the accounting methods used by ev3 unless required by generally accepted accounting principles or applicable law;

Not enter into a material contract or amend, terminate or waive, release or assign any material rights or claims with respect to any material contract in any material respect;

Not settle (i) any suit, action, claim, proceeding or investigation that is disclosed in ev3 s reports filed with the SEC prior to the date of the Merger Agreement or (ii) any other suit, action, claim, proceeding or investigation;

Not make, revise, or amend any material tax election or settle or compromise any material federal, state, local, or foreign tax liability, change any material tax accounting period, change any material method of tax accounting, enter into any closing agreement relating to any material tax, file any amended tax return, file any tax return in a manner inconsistent with past practice, surrender any right to claim a material tax refund, or consent to any waiver or extension of the statute of limitations applicable to any material tax claim or assessment; and

Not enter into any contract, agreement, commitment or arrangement to do any of the items prohibited by clauses (g) through (s) above.

Following completion of the Offer and the Merger, the Reporting Persons intend to operate the ev3 business through one or more subsidiaries of Covidien plc under the direction of Covidien plc s management. The Reporting Persons intend to continue to review the business, operations, capitalization and management of ev3. Accordingly, the Reporting Persons reserve the right to change their plans and intentions at any time, as they deem appropriate.

If permitted by applicable law, subsequent to the completion of the Offer and a short-form merger or any subsequent offering period, if necessary, the Reporting Persons intend to delist the Shares from The Nasdaq Global Select Market.

Except as otherwise set forth in this Schedule 13D, the Reporting Persons have no present plans or proposals which relate to or would result in:

a) The acquisition by any person of additional securities of the issuer, or the disposition of securities of the issuer;

b) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the issuer or any of its subsidiaries;

c) A sale or transfer of a material amount of assets of the issuer or any of its subsidiaries;

d) Any change in the present board of directors or management of the issuer, including any plans or proposals to change the number or term of directors or to fill any existing vacancies on the board;

e) Any material change in the present capitalization or dividend policy of the issuer;

f) Any other material change in the issuer s business or corporate structure including but not limited to, if the issuer is a registered closed-end investment company, any plans or proposals to make any changes in its investment policy for which a vote is required by section 13 of the Investment Company Act of 1940;

g) Changes in the issuer s charter, bylaws or instruments corresponding thereto or other actions which may impede the acquisition of control of the issuer by any person;

h) Causing a class of securities of the issuer to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association;

i) A class of equity securities of the issuer becoming eligible for termination of registration pursuant to Section 12(g)(4) of the Act; or

j) Any action similar to any of those enumerated above.

ITEM 5. INTEREST IN SECURITIES OF THE ISSUER.

The information set forth and/or incorporated by reference in Items 2, 3 and 4 is hereby incorporated by reference into this Item 5.

a) As of the date hereof, the Reporting Persons own no Shares. For purposes of Rule 13d-3 under the Exchange Act, however, as a result of entering into the Tender and Voting Agreement, the Reporting Persons may be deemed to possess beneficial ownership of an aggregate of 22,674,168 Shares, representing approximately 19.8% of the fully diluted outstanding Shares outstanding as of June 7, 2010. The Reporting Persons and the other persons listed on Schedule I hereto, however, disclaim beneficial ownership of such Shares, and this statement shall not be construed as an admission that any of the Reporting Persons or those listed on Schedule I hereto is the beneficial owner for any purpose of the Shares covered by this 13D disclosure.

Except as set forth in this Schedule 13D, (1) to the best of Covidien plc s knowledge as of the date hereof, neither Covidien plc nor any of its directors and executive officers named in Schedule I hereto owns any Shares, (2) to the best of CIFSA s knowledge as of the date hereof, neither

CIFSA nor any of its directors and executive officers named in Schedule I hereto owns any Shares, (3) to the best of Covidien Group s knowledge as of the date hereof, neither Covidien Group nor any of its directors and executive officers named in Schedule I hereto owns any Shares, and (4) to the best of Purchaser s knowledge as of the date hereof, neither Purchaser nor any of its directors and executive officers named in Schedule I hereto owns any Shares.

b) Prior to June 1, 2010, none of the Reporting Persons owned or was the beneficial owner (as defined in Rule 13d-3 promulgated under the Exchange Act) of any Shares. Upon execution of the Tender and Voting Agreement, the Reporting Persons may be deemed to have acquired beneficial ownership (as defined in Rule 13d-3 promulgated under the Exchange Act) of Shares, because pursuant to the Tender and Voting Agreement, the Reporting Persons may be deemed to have acquired the shared power to vote or direct the vote and to dispose or to direct the disposition of the 22,674,168 Shares, representing approximately 19.8% of the fully diluted outstanding Shares outstanding as of June 7, 2010. Upon the consummation of the Offer, the Reporting Persons would have sole voting and investment power over such Shares.

c) Except for the transactions described herein, (1) to the best of Covidien plc s knowledge as of the date hereof, neither Covidien plc nor any of its directors and executive officers named in Schedule I hereto has effected any transaction in Shares during the past 60 days, (2) to the best of CIFSA s knowledge as of the date hereof, neither CIFSA nor any of its directors and executive officers named in Schedule I hereto has effected any transaction in Shares during the past 60 days, (3) to the best of Covidien Group s knowledge as of the date hereof, neither Covidien Group nor any of its directors and executive officers named in Schedule I hereto has effected any transaction in Shares during the past 60 days and (4) to the best of Purchaser s knowledge as of the date hereof, neither Purchaser nor any of its directors and executive officers named in Schedule I hereto has effected any transaction in Shares during the past 60 days.

d) Other than the Stockholders identified in Item 3 party to the Tender and Voting Agreement in the form of Annex II to Exhibit 2 to this Schedule 13D and incorporated herein by reference, (1) to the best of Covidien plc s knowledge as of the date hereof, neither Covidien plc nor any of its directors and executive officers named in Schedule I hereto has or knows any other person who has the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, any Shares beneficially owned by Covidien plc, (2) to the best of CIFSA s knowledge as of the date hereof, neither CIFSA nor any of its directors and executive officers named in Schedule I hereto has or knows any other person who has the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, any Shares beneficially owned by CIFSA, (3) to the best of Covidien Group s knowledge as of the date hereof, neither Covidien Group nor any of its directors and executive officers named in Schedule I hereto has or knows any other person who has the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, any Shares beneficially owned by Covidien Group, and (4) to the best of Purchaser s knowledge as of the date hereof, neither Purchaser nor any of its directors and executive officers named in Schedule I hereto has or knows any other person who has the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, any Shares beneficially owned by Purchaser.

ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER.

The information set forth and/or incorporated by reference in Items 2 through 5 is hereby incorporated by reference into this Item 6.

As described in Item 3, on June 1, 2010, Covidien Group and Purchaser entered into the Tender and Voting Agreement with the Stockholders. During the term of the Tender and Voting Agreement, except as otherwise provided therein, each Stockholder agreed not to: (A) directly or indirectly, sell, transfer, assign, pledge, hypothecate, tender, encumber or otherwise dispose of or limit its right to vote in any manner any of the 27,151,570 Shares they own in the aggregate, or agree to do any of the foregoing; (B) take any action which would have the effect of preventing or disabling a Stockholder from performing its obligations under the Tender and Voting Agreement; and (C) subject to certain covenants in the Merger Agreement that are applicable to ev3, directly or indirectly (i) initiate, solicit or knowingly encourage, or knowingly take any action to facilitate the making of, any offer or proposal which constitutes or is reasonably likely to lead to any Acquisition Proposal (as defined in the Merger Agreement), (ii) provide any non-public information or data to, any person (other than Covidien Group or any of its affiliates or Representatives) relating to any Acquisition Proposal, (iii) enter into or execute, or propose to enter into or execute, any agreement relating to an Acquisition Proposal or (iv) approve, endorse, recommend or

make or authorize any statement, recommendation, or solicitation in support of any Acquisition Proposal or any offer or proposal relating to an Acquisition Proposal. Each Stockholder further agreed to immediately cease and cause to be terminated any existing activities, discussions or negotiations with any such other parties conducted heretofore with respect to any of the foregoing and to notify Covidien Group immediately if any party contacts the Stockholder following the date of the Tender and Voting Agreement (other than Purchaser or Covidien Group) concerning any Acquisition Proposal or any other sale, transfer, pledge or other disposition or conversion of any Shares.

Except for the agreements described above, to the knowledge of Covidien Group and Purchaser, there are no contracts, arrangements, understandings or relationships (legal or otherwise), including, but not limited to, transfer or voting of any of the securities, finder s fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or loss, or the giving or withholding of proxies, between the persons enumerated in Item 2, and any other person, with respect to any securities of ev3, including any securities pledged or otherwise subject to a contingency the occurrence of which would give another person voting power or investment power over such securities other than standard default and similar provisions contained in loan agreements.

References to, and descriptions of, the Merger Agreement and the Tender and Voting Agreement as set forth above in this Item 6 are qualified in their entirety by reference to the copies of the Merger Agreement and the Form of Tender and Voting Agreement included as Exhibit 2 to this Schedule 13D and which is incorporated herein in its entirety by this reference.

ITEM 7. MATERIAL TO BE FILED AS EXHIBITS.

Exhibit	Description
1	Joint Filing Agreement, between Covidien plc, Covidien International Finance S.A., Covidien Group S.a.r.l. and COV Delaware Corporation, dated June 11, 2010.
2	Agreement and Plan of Merger, by and among Covidien Group S.a.r.l., COV Delaware Corporation, and ev3 Inc., dated June 1, 2010.
3	Debt Commitment Letter, by and among Covidien plc, Covidien International Finance S.A. and Morgan Stanley Senior Funding, Inc., dated June 1, 2010, and Joinder Agreement to Commitment Letter, by and among the parties thereto, dated June 11, 2010.

SIGNATURES

After reasonable inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this Statement is true, complete and correct.

Dated: June 11, 2010

COVIDIEN PLC

By: /s/ John W. Kapples
Name: John W. Kapples
Title: Vice President and Secretary

COVIDIEN INTERNATIONAL FINANCE S.A.

By: /s/ Michelangelo F. Stefani
Name: Michelangelo F. Stefani
Title: General Manager

COVIDIEN GROUP S.A.R.L.

By: /s/ Michelangelo F. Stefani
Name: Michelangelo F. Stefani
Title: Managing Director

COV DELAWARE CORPORATION

By: /s/ Matthew J. Nicolella
Name: Matthew J. Nicolella
Title: Vice President and Assistant Secretary

SCHEDULE 1

The names of the directors and executive officers (or functional equivalents) of Covidien Group, Purchaser, CIFSA and Covidien plc and their present principal occupations or employment are set forth below. Unless otherwise indicated, (i) the principal business address for each director of Covidien plc is Cherrywood Business Park, Block G, First Floor, Loughlinstown, Co. Dublin, Ireland, and the business telephone number for each such director or officer is +353 1 439-3000 (ii) the principal business address for each director of CIFSA is 3b Bld Prince Henri, L-1724, Luxembourg, (iii) the principal business address for each manager of Covidien Group is 3b Bld Prince Henri, L-1724, Luxembourg, and (iv) the principal business address for each officer of Covidien plc and each director and officer of Purchaser is 15 Hampshire Street, Mansfield, MA 02048, and the business telephone number for each such director and officer is (508) 261-8000. Unless otherwise indicated, each director and executive officer (or functional equivalent) is a citizen of the United States. References below to Covidien include Covidien plc, its predecessor, Covidien Ltd., and the healthcare business of Tyco International for all periods prior to the separation of Covidien Ltd. from Tyco International.

COVIDIEN PLC

Directors

Richard J. Meelia Chairman of the Board of Directors, President and Chief Executive Officer of Covidien. Mr. Meelia is also President of the Purchaser. Mr. Meelia s principal business address is 15 Hampshire Street, Mansfield, Massachusetts 02048 and his business telephone number is (508) 261-8000.

Craig Arnold Vice Chairman and Chief Operating Officer, Industrial Sector of Eaton Corporation, a diversified industrial manufacturer.

Robert H. Brust Chief Financial Officer of Sprint Nextel Corporation, a wireless and wireline communications company.

John M. Connors, Jr. Chairman Emeritus of Hill, Holliday, Connors, Cosmopulos, Inc., a full-service advertising agency that is part of The Interpublic Group of Companies, Inc.

Christopher J. Coughlin Executive Vice President and Chief Financial Officer of Tyco International, a global provider of security products and services, fire protection and detection products and services, valves and controls, and other industrial products.

Timothy M. Donahue Member of the Board of Directors of Eastman Kodak Company, NVR, Inc. and Tyco International Ltd.

Kathy J. Herbert Member of the Board of Directors of Covidien plc.

Randall J. Hogan, III Chairman and Chief Executive Officer of Pentair, Inc., an industrial manufacturing company.

Dennis H. Reilley Member of the Board of Directors of H.J. Heinz Company, Marathon Oil Corporation and The Dow Chemical Company.

Tadataka Yamada President of the Global Health Program of the Bill & Melinda Gates Foundation.

Joseph A. Zaccagnino Member of the Board of Directors of NewAlliance Bancshares, Inc.

Officers

Richard J. Meelia See above under Covidien plc Directors.

Charles J. Dockendorff Executive Vice President and Chief Financial Officer of Covidien and Vice President of Purchaser.

Jose E. Almeida Senior Vice President & President, Medical Devices of Covidien.

Timothy R. Wright Senior Vice President of Covidien and President, Pharmaceuticals of Covidien. Mr. Wright s principal business address is 675 McDonnell Blvd., Hazelwood, Missouri 63042 and his business telephone number is (314) 654-2000.

Eric A. Kraus Senior Vice President, Corporate Communications and Public Affairs of Covidien.

John H. Masterson Senior Vice President and General Counsel of Covidien and Vice President and Assistant Secretary of Purchaser.

Amy A. McBride-Wendell Senior Vice President, Strategy and Business Development of Covidien.

Michael P. Dunford Senior Vice President, Human Resources of Covidien.

Richard G. Brown, Jr. Vice President, Chief Accounting Officer and Corporate Controller of Covidien and Vice President of Purchaser.

Kevin G. DaSilva Vice President and Treasurer of Covidien, member of the board of directors of CIFSA and member of the board of directors and Vice President and Treasurer of Purchaser.

Eric C. Green Vice President and Chief Tax Officer of Covidien, member of the board of directors of CIFSA and Vice President and Assistant Treasurer of Purchaser.

Coleman N. Lannum Vice President, Investor Relations of Covidien.

James C. Clemmer President, Medical Supplies Sector of Covidien.

COVIDIEN INTERNATIONAL FINANCE S.A.

Anton Stadtbaumer Member of the board of directors of CIFSA, manager of Covidien Group and Regional Treasurer of Covidien Finance GmbH. Mr. Stadtbaumer s principal business address is Victor von Bruns Strasse 19, 8212 Neuhausen am Rheinfall, Switzerland and his business telephone number is +41 52 556 0677. Mr. Stadtbaumer has German citizenship.

Michelangelo Stefani Managing director of CIFSA. Mr. Stefani has Italian citizenship.

Kevin G. DaSilva See above under Covidien plc Officers.

Eric C. Green See above under Covidien plc Officers.

Erik De Gres Member of the board of directors of CIFSA. Mr. De Gres has Belgian citizenship.

Thomas Ford Member of the board of directors of CIFSA and Manager and Deputy General Counsel-EMEA of Covidien Group. Mr. Ford has United Kingdom citizenship.

COVIDIEN GROUP S.A.R.L.

Anton Stadtbaumer See above under Covidien International Finance S.A.

Michelangelo Stefani See above under Covidien International Finance S.A.

Eric C. Green See above under Covidien plc Officers.

Erik De Gres See above under Covidien International Finance S.A.

Thomas Ford See above under Covidien International Finance S.A.

COV DELAWARE CORPORATION

Directors

Kevin G. DaSilva See above under Covidien plc Officers.

John W. Kapples Vice President and Secretary of Purchaser and Covidien plc.

Matthew J. Nicolella Vice President and Assistant Secretary of Purchaser and Vice President and Chief Mergers & Acquisitions/Licensing Counsel of Tyco Healthcare Group LP d/b/a/ Covidien.

Officers

Richard J. Meelia See above under Covidien plc Directors.

Richard G. Brown See above under Covidien plc. Officers.

Stephen C. Carey Vice President and Assistant Treasurer of Purchaser and Vice President, Tax Reporting of Tyco Healthcare Group LP d/b/a/ Covidien.

Kevin G. DaSilva See above under Covidien plc. Officers.

Charles J. Dockendorff See above under Covidien plc Officers.

Lisa K. Golod Vice President and Assistant Treasurer of Purchaser and Vice President, Tax Planning of Tyco Healthcare Group LP d/b/a/ Covidien.

Eric. C. Green See above under Covidien plc Officers.

John W. Kapples See above under COV Delaware Corporation Directors.

John H. Masterson See above under Covidien plc Officers.

Matthew J. Nicolella See above under COV Delaware Corporation Directors.

Lawrence T. Weiss Vice President and Assistant Secretary of Purchaser and Vice President and Chief International Counsel of Tyco Healthcare Group LP d/b/a/ Covidien.

Exhibit 1

JOINT FILING AGREEMENT

In accordance with Rule 13d-1(k)(1) under the Securities Exchange Act of 1934, as amended, the undersigned hereby agree that this Statement on Schedule 13D relating to the beneficial ownership of Common Stock, $0.01 par value per share, of ev3 Inc. is being filed with the Securities and Exchange Commission on behalf of each of them. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Dated: June 11, 2010

COVIDIEN PLC

By: /s/ John W. Kapples
Name: John W. Kapples
Title: Vice President and Secretary

COVIDIEN INTERNATIONAL FINANCE S.A.

By: /s/ Michelangelo F. Stefani
Name: Michelangelo F. Stefani
Title: General Manager

COVIDIEN GROUP S.A.R.L.

By: /s/ Michelangelo F. Stefani
Name: Michelangelo F. Stefani
Title: Managing Director

COV DELAWARE CORPORATION

By: /s/ Matthew J. Nicolella
Name: Matthew J. Nicolella
Title: Vice President and Assistant Secretary

Exhibit 2

AGREEMENT AND PLAN OF MERGER

by and among

COVIDIEN GROUP S.A.R.L.,

COV DELAWARE CORPORATION,

and

EV3 INC.

June 1, 2010

TABLE OF CONTENTS

LIST OF DEFINED TERMS

Exhibit 2

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of June 1, 2010 (the "Agreement Date"), is by and among ev3 Inc., a Delaware corporation (the "Company"), Covidien Group S.a.r.l., a Luxembourg company (the "Parent"), and COV Delaware Corporation, a Delaware corporation and wholly owned subsidiary of the Parent (the "Purchaser").

A. The respective Boards of Directors of the Parent, the Purchaser and the Company have approved the acquisition of the Company by the Parent upon the terms and subject to the conditions set forth in this Agreement.

B. In furtherance of such acquisition, (i) Parent has agreed to cause the Purchaser to commence a tender offer (such offer, as amended from time to time as permitted by this Agreement, the "Offer") to purchase all of the shares (the "Shares") of common stock, par value $0.01 per share, of the Company (the "Company Common Stock") that are outstanding, at a price of $22.50 per Share, paid to the seller in cash, without interest thereon (such amount or any higher amount per Share that may be paid pursuant to the Offer, the "Offer Price") and (ii) the Company has granted to the Purchaser the Top-Up Option.

C. Following the consummation of the Offer upon the terms and subject to the conditions set forth in this Agreement, Parent shall cause the Purchaser to be merged with and into the Company, with the Company continuing as the surviving corporation (the "Merger"), and each Share that is not tendered and accepted pursuant to the Offer, other than Shares cancelled pursuant to Section 3.1(b) and Dissenting Shares, shall thereupon be cancelled and converted into the right to receive cash in an amount equal to the Offer Price, on the terms and subject to the conditions set forth in this Agreement.

D. The Board of Directors of the Company (the "Company Board") has, upon the terms and subject to the conditions set forth herein, (i) determined that the Offer, the Merger and the other transactions contemplated by this Agreement (the "Transactions"), are fair to and in the best interests of the Company and its stockholders, (ii) approved and declared advisable this Agreement, the Offer and the Merger, and (iii) subject to the other terms and conditions of this Agreement, resolved to recommend that all holders of Shares (the "Company Stockholders") tender their Shares pursuant to the Offer and, if required by applicable Law, adopt this Agreement and approve the Merger (the "Company Board Recommendation").

E. The respective boards of directors of the Parent and the Purchaser have approved this Agreement and the transactions contemplated hereby, including the Offer and the Merger, and have declared it advisable for the Parent and the Purchaser, respectively, to enter into this Agreement.

F. Concurrently with the execution and delivery of this Agreement, and as a condition and inducement to the Parent entering into this Agreement, certain Company Stockholders have entered into a tender and voting agreement, dated as of the Agreement, in substantially the form set forth in Annex II hereof, pursuant to which, among other things, each of such Company Stockholders has agreed to tender his, her or its Shares to the Purchaser in the Offer (the "Tender and Voting Agreement").

G. The Parent, the Purchaser and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Offer and the Merger and also to prescribe various conditions to the Offer and the Merger.

Accordingly, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties to this Agreement, intending to be legally bound, agree as follows:

ARTICLE I

THE OFFER

Section 1.1 The Offer.

(a) Commencement of the Offer. Provided that this Agreement shall not have been terminated in accordance with Section 8.1, as promptly as practicable after the Agreement Date (but in no event later than ten (10) Business Days after the date of the initial public announcement of this Agreement), the Purchaser shall, and the Parent shall cause the Purchaser to, commence (within the meaning of Rule 14d-2 under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the Exchange Act)), the Offer to purchase all of the Shares at the Offer Price. For purposes of this Agreement, Business Day means a day other than a Saturday, a Sunday or another day on which commercial banking institutions in New York, New York are authorized or required by Law to be closed.

(b) Terms and Conditions of Offer. Subject to (i) there being validly tendered in the Offer and not properly withdrawn prior to the Expiration Date that number of Shares which, together with the number of Shares, if any, then owned of record by the Parent or the Purchaser or their respective wholly owned Subsidiaries or with respect to which the Parent or the Purchaser has, directly or indirectly, voting power, representing at least a majority of all outstanding Shares (determined on a Fully Diluted Basis) entitled to vote (x) in the election of directors or (y) upon the adoption of this Agreement and approval of the Merger, on the date Shares are accepted for payment (collectively, the Minimum Condition); and (ii) the satisfaction or waiver by the Parent or the Purchaser of the other conditions and requirements set forth in Annex I, the Purchaser shall, and the Parent shall cause the Purchaser to, accept for payment and pay for all Shares validly tendered and not properly withdrawn pursuant to the Offer as promptly as practicable after the Purchaser is legally permitted to do so under applicable federal, state, local, or foreign law, statute, rule, regulation, final and enforceable ordinance or Order of any Governmental Entity (Law) (the date and time of acceptance for payment, the Share Acceptance Time). The Parent shall provide or cause to be provided to the Purchaser on a timely basis funds sufficient to purchase and pay for any and all Shares that the Purchaser becomes obligated to accept for payment and purchase pursuant to the Offer. The Offer Price payable in respect of each Share validly tendered and not properly withdrawn pursuant to the Offer shall be paid net to the holder of such Share in cash, without interest, subject to any withholding of any Taxes required by applicable Law in accordance with Section 3.5. For purposes of this Agreement, Fully Diluted Basis means, as of any date, (i) the number of Shares outstanding plus (ii) the number of Shares the Company is then required to issue pursuant to options, warrants, rights to acquire or other obligations outstanding at such date, other securities convertible or exchangeable into or exercisable for Shares or otherwise, including pursuant to the Company Equity Plans, but excluding any (x) Shares attributable to the unexercised portion of the Top-Up Option and (y) any options, warrants and other rights to acquire Shares that are not vested as of the date of purchase and would not be vested immediately after giving effect to the consummation of the Offer or prior to the End Date.

(c) Offer to Purchase; Waiver of Conditions. The Offer shall be made by means of an offer to purchase (the Offer to Purchase) that describes the terms and conditions of the Offer in accordance with this Agreement, including the conditions and requirements set forth in Annex I. The Parent and the Purchaser expressly reserve the right (but shall not be obligated) to increase the Offer Price, waive any condition to the Offer (except the Minimum Condition) or to make any other changes in the terms and conditions of the Offer; *provided, however*, that unless previously approved by the Company in writing, the Purchaser shall not (i) decrease the Offer Price payable in the Offer, (ii) change the form of consideration payable in the

Offer, (iii) reduce the number of Shares sought to be purchased in the Offer, (iv) impose any condition to the Offer in addition to the conditions to the Offer set forth in Annex I, (v) amend or waive the Minimum Condition, (vi) amend or modify the other conditions set forth in Annex I in a manner adverse to the holders of Shares or that would, individually or in the aggregate, reasonably be expected to prevent or materially delay the consummation of the Offer or prevent, materially delay or impair the ability of the Parent or the Purchaser to consummate the Offer, (vii) extend the Expiration Date other than in accordance with this Agreement, or (viii) otherwise amend any other term of the Offer in a manner adverse to the holders of Shares.

(d) Expiration of Offer. Subject to the terms and conditions of this Agreement, unless extended in accordance with the terms of this Agreement, the Offer shall expire on the 20th or 21st Business Day (calculated in accordance with Rule 14d-1(g)(3) and 14d-2 under the Exchange Act) following the commencement of the Offer (the "Initial Expiration Date") or, if the Offer has been extended in accordance with this Agreement, at the time and date to which the Offer has been so extended (the Initial Expiration Date, or such later time and date to which the Offer has been extended in accordance with this Agreement, the "Expiration Date").

(e) Extension of Offer. Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, (i) the Purchaser shall extend the Offer for any period or periods required by (x) applicable Law, (y) applicable rules, regulations, interpretations or positions of the United States Securities and Exchange Commission (the "SEC") or its staff or (z) any of the rules and regulations, including listing standards, of the Nasdaq Global Market or other United States national securities exchange registered under the Exchange Act on which the applicable common stock is then traded (the "Securities Exchange Rule"), (ii) in the event that any of the conditions to the Offer set forth on Annex I hereto are not satisfied or waived as of any then scheduled Expiration Date, the Purchaser may extend the Offer for successive extension periods of not more than ten (10) Business Days each in order to permit the satisfaction of the conditions to the Offer, and (iii) in the event that any of the conditions to the Offer set forth on Annex I hereto are not satisfied or waived as of any then scheduled Expiration Date and there has not been a Change of Recommendation, the Company may, by written notice at least two (2) Business Days prior to such scheduled Expiration Date, request that the Purchaser extend the Offer for up to two (2) successive periods of ten (10) Business Days per extension period, until all of the conditions to the Offer set forth on Annex I hereto are satisfied or, to the extent permitted, validly waived; *provided*, *however*, that notwithstanding the foregoing clause (i) of this Section 1.1(e), in no event shall the Purchaser be required to extend the Offer beyond the earlier to occur of (1) the date this Agreement is terminated pursuant to Section 8.1 hereof or (2) the End Date; and *provided, further*, that the foregoing clause (i) of this Section 1.1(e) shall not be deemed to impair, limit or otherwise restrict in any manner the right of the Parent to terminate this Agreement pursuant to Section 8.1 hereof. The Purchaser shall not and the Parent agrees that it shall cause the Purchaser not to terminate or withdraw the Offer other than in connection with termination of this Agreement pursuant to Section 8.1.

(f) Subsequent Offering Period. If necessary to obtain sufficient Shares to reach the Short Form Threshold (without regard to Shares tendered pursuant to guaranteed delivery procedures that have not yet been delivered in settlement or satisfaction of such guarantee), the Purchaser may, in its sole discretion, provide for a subsequent offering period (and one or more extensions thereof) in accordance with Rule 14d-11 under the Exchange Act (each a "Subsequent Offering Period"); *provided, however,* that if the Purchaser is required to exercise the Top-Up Option pursuant to Section 1.4(a), the Purchaser shall not be permitted to provide for a Subsequent Offering Period. Subject to the terms and conditions of this Agreement and the Offer, the Purchaser shall, and the Parent shall cause the Purchaser to, immediately accept for payment, and pay for, all Shares that are validly tendered pursuant to the Offer during such Subsequent Offering Period. The Offer Documents shall provide for the possibility of a Subsequent Offering Period in a manner consistent with the terms of this Section 1.1(f).

(g) Termination of Offer. The Purchaser shall not terminate the Offer prior to any scheduled Expiration Date without the prior written consent of the Company, except if this Agreement is terminated pursuant to

Section 8.1. If this Agreement is terminated pursuant to Section 8.1, the Purchaser shall, and the Parent shall cause the Purchaser to, promptly terminate the Offer and shall not acquire the Shares pursuant thereto. If the Offer is terminated by the Purchaser, or this Agreement is terminated pursuant to Section 8.1 prior to the acquisition of Shares in the Offer, the Purchaser shall promptly (and in any event within two (2) Business Days of such termination) return, or cause any depositary acting on behalf of the Purchaser to return, in accordance with applicable Law, all tendered Shares that have not then been purchased in the Offer to the registered holders thereof.

(h) Schedule TO; Offer Documents. On the date the Offer is commenced (within the meaning of Rule 14d-2 under the Exchange Act), the Parent and the Purchaser shall file with the SEC, in accordance with Rule 14d-3 under the Exchange Act, a Tender Offer Statement on Schedule TO with respect to the Offer (together with all amendments, supplements and exhibits thereto, the Schedule TO). The Schedule TO shall include, as exhibits: the Offer to Purchase, a form of letter of transmittal, the notice of guaranteed delivery, a form of summary advertisement and other ancillary Offer documents and instruments required by the Exchange Act or other applicable Law pursuant to which the Offer shall be made, including any schedule or form filed pursuant to Chapter 80B of the Minnesota Statutes (collectively, together with any amendments and supplements thereto, the Offer Documents). Subject to Section 6.3, the Company hereby consents to the inclusion in the Offer Documents of the Company Board Recommendation. The Parent and Purchaser shall file with the Commissioner of Commerce of the State of Minnesota any registration statement relating to the Offer required to be filed pursuant to Chapter 80B of the Minnesota Statutes and shall disseminate the Offer Documents, including any such registration statement required by Chapter 80B of the Minnesota Statutes, to the holders of the Shares as and to the extent required by, and within the time period required by, Chapter 80B of the Minnesota Statutes. The Parent and the Purchaser shall cause the Schedule TO and the Offer Documents to comply in all material respects with the requirement of applicable United States federal securities Laws and, on the date first filed with the SEC and on the date first published, sent or given to holders of Shares, not to contain any untrue statement of material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, except no covenant is made by the Parent or the Purchaser with respect to information supplied by the Company in writing specifically for inclusion or incorporation by reference in the Schedule TO or Offer Documents. The Parent and the Purchaser, on the one hand, and the Company, on the other hand, shall promptly correct any information provided by such party for use in the Offer Documents, if and to the extent that such information shall have become false or misleading in any material respect or as otherwise required by applicable Law, and the Parent and the Purchaser agree to cause the Offer Documents, as so corrected, to be filed with the SEC and disseminated to Company Stockholders, in each case as and to the extent required by the Exchange Act. The Company and its counsel shall be given a reasonable opportunity to review the Schedule TO and the Offer Documents before they are filed with the SEC, the Parent and the Purchaser shall give due consideration to the reasonable additions, deletions or changes suggested thereto by the Company and its counsel. In addition, the Parent and the Purchaser shall provide the Company and its counsel with copies of any written comments, and shall inform them of any oral comments, that the Parent, the Purchaser or their counsel may receive from time to time from the SEC or its staff with respect to the Schedule TO or the Offer Documents promptly after receipt of such comments, and any written or oral responses thereto. The Company and its counsel shall be given a reasonable opportunity to review any such written responses and the Parent and the Purchaser shall give due consideration to the reasonable additions, deletions or changes suggested thereto by the Company and its counsel.

(i) Certain Adjustments. The Offer Price shall be adjusted appropriately to reflect any reclassification, recapitalization, stock split (including a reverse stock split), or combination, exchange or readjustment of shares, or any stock dividend or stock distribution occurring (or for which a record date is established) after the Agreement Date and prior to the payment by the Purchaser for Shares validly tendered and not properly withdrawn in connection with the Offer.

Section 1.2 Company Action.

(a) Schedule 14D-9. On the date the Offer Documents are filed with the SEC the Company shall, in a manner that complies with Rule 14d-9 under the Exchange Act, file a Tender Offer Solicitation/Recommendation Statement on Schedule 14D-9 with the SEC with respect to the Offer (together with all amendments, supplements and exhibits thereto, the Schedule 14D-9) that shall, subject to the provisions of Section 6.3(e), contain the Company Board Recommendation. The Schedule 14D-9 will comply in all material respects with the applicable provisions of the Exchange Act and Delaware corporation Law. The Company shall cause the Schedule 14D-9 to comply in all material respects with the requirements of the applicable United States federal securities Laws and Delaware corporation Law and, on the date first filed with the SEC and on the date first published, sent or given to holders of the Shares, not to contain any untrue statement of material fact or omit to state any material fact required to be stated therein, in light of the circumstances under which they were made, not misleading, except no covenant is made by the Company with respect to any information supplied by the Parent or the Purchaser in writing specifically for inclusion or incorporation by reference in the Schedule 14D-9. The Company agrees to cause the Schedule 14D-9 to be disseminated to the Company Stockholders. The Company, on the one hand, and the Parent and the Purchaser, on the other hand, agree to promptly correct any information provided by such party for use in the Schedule 14D-9, if and to the extent that such information shall have become false or misleading in any material respect or as otherwise required by applicable Law, and the Company agrees to cause the Schedule 14D-9, as so corrected, to be filed with the SEC and disseminated to the Company Stockholders, in each case as and to the extent required by the Exchange Act. The Parent, the Purchaser and their counsel shall be given a reasonable opportunity to review the Schedule 14D-9 before it is filed with the SEC, and the Company shall give due consideration to the reasonable additions, deletions or changes suggested thereto by the Parent, the Purchaser and their counsel. In addition, the Company shall provide the Parent, the Purchaser and their counsel with copies of any written comments, and shall inform them of any oral comments, that the Company or its counsel may receive from time to time from the SEC or its staff with respect to the Schedule 14D-9 promptly after receipt of such comments, and any written or oral responses thereto. The Parent, the Purchaser and their counsel shall be given a reasonable opportunity to review any such written responses and the Company shall give due consideration to the reasonable additions, deletions or changes suggested thereto by the Parent, the Purchaser and their counsel. After the commencement of the Offer, the Company will not publish, send, or give to Company Stockholders supplemental or revised materials without the Parent s prior written consent, except as (i) as may be required by Law or (ii) as contemplated or permitted by Section 6.3.

(b) Communication Materials. Promptly after the Agreement Date (and in any event in sufficient time to permit the Purchaser to commence the Offer in a timely manner) and otherwise from time to time as requested by the Purchaser or its agents, the Company shall furnish or cause to be furnished to the Purchaser mailing labels, security position listings, non-objecting beneficial owner lists and any other listings or computer files containing the names and addresses of the record or beneficial owners of the Shares as of the most recent practicable date, and shall promptly furnish the Purchaser with such information (including updated lists of holders of the Shares and their addresses, mailing labels, security position listings and non-objecting beneficial owner lists) and such other assistance as the Purchaser or its agents may reasonably request in communicating with the record and beneficial owners of Shares, in connection with the preparation and dissemination of the Schedule TO and the Offer Documents and the solicitation of tenders of Shares in the Offer.

Section 1.3 Directors.

(a) Designation of Directors by Parent. Effective upon the Share Acceptance Time and from time to time thereafter so long as the Parent directly or indirectly beneficially owns not less than a majority of the issued and outstanding Shares, the Parent shall be entitled to designate up to such number of directors, rounded up to the next whole number, on the Company Board as is equal to the product of (i) the total number of directors on the Company Board (giving effect to the election or appointment of any additional directors pursuant to this Section 1.3) and (ii) the percentage that the number of Shares beneficially owned

by the Parent and/or the Purchaser (including Shares accepted for payment in the Offer and the purchased Top-Up Option Shares, if any) bears to the total number of Shares outstanding, and the Company shall, upon request by the Purchaser, promptly increase the size of the Company Board or use its reasonable best efforts to secure the resignations of such number of directors as is necessary to provide the Purchaser with such level of representation and shall cause the Purchaser s designees to be so elected or appointed. Subject to subsection (c) of this Section 1.3, after the Share Acceptance Time the Company shall also cause individuals designated by the Purchaser to constitute the same percentage as such individuals represent of the entire Company Board on the following: (i) each committee of the Company Board (other than any committee of the Company Board comprised solely of Continuing Directors established to take action under this Agreement); (ii) each board of directors and each committee thereof of each wholly owned Subsidiary of the Company and (iii) the designees, appointees or other similar representatives of the Company on each board of directors (or other similar governing body) and each committee thereof of each non-wholly owned Subsidiary. The Company s obligations to appoint designees to the Company Board shall be subject to Section 14(f) of the Exchange Act and Rule 14f-1 promulgated thereunder as well as the Securities Exchange Rules. At the request of the Purchaser, the Company shall take all actions necessary to effect any such election or appointment of the Purchaser s designees, including mailing to the Company Stockholders the information required by Section 14(f) of the Exchange Act and Rule 14f-l promulgated thereunder which, unless the Purchaser otherwise elects, shall be so mailed together with the Schedule 14D-9; *provided*, that the Parent and the Purchaser shall have timely supplied to the Company all information with respect to themselves and their respective officers, directors and Affiliates (as defined in Rule 12b-2 of the Exchange Act (the Affiliates)) required by such Section and Rule.

(b) Continuing Directors. Following the election or appointment of the Parent s designees to the Company Board pursuant to Section 1.3(a) and until the Effective Time, the Company Board shall at all times include, and the Company, the Parent and the Purchaser shall use their reasonable best efforts to cause the Company Board to at all times include, at least three (3) Continuing Directors and each committee of the Company Board and the board of directors (or similar body) of each Subsidiary of the Company shall at all times include, and the Company, the Parent and the Purchaser shall use their reasonable best efforts to cause each committee of the Company Board and the board of directors (or similar body) of each Subsidiary of the Company to at all times include, at least one (1) Continuing Director. A Continuing Director shall mean a person who is a member of the Company Board as of the Agreement Date or a person selected by the Continuing Directors then in office, each of whom shall be an independent director for purposes of applicable Securities Exchange Rules and shall be eligible to serve on the Company s audit committee under the Exchange Act and Securities Exchange Rules and, at least one of whom shall be an audit committee financial expert as defined in Item 407(d)(5) of Regulation S-K and the instructions thereto; *provided, however* that if the number of Continuing Directors is reduced to less than three (3) prior to the Effective Time, any remaining Continuing Directors (or Continuing Director, if there shall be only one (1) remaining) shall be entitled to designate a person who is not an officer, director, stockholder or designee of Parent or any of its Affiliates to fill such vacancy, and such person shall be deemed to be a Continuing Director for all purposes of this Agreement, or, if no Continuing Directors then remain, the other directors shall designate three (3) persons who are not officers, directors, stockholders or designees of Parent or any of its Affiliates to fill such vacancies, and such persons shall be deemed to be Continuing Directors for all purposes of this Agreement.

(c) Required Approvals of Continuing Directors. Notwithstanding anything to the contrary set forth in this Agreement, in the event that the Parent s designees are elected or appointed to the Company Board prior to the Effective Time pursuant to Section 1.3(a), the approval of a majority of such Continuing Directors (or the sole Continuing Director if there shall be only one (1) Continuing Director) shall be required in order to (i) amend, modify or terminate this Agreement, or agree or consent to any amendment, modification or termination of this Agreement, in any case on behalf of the Company, (ii) extend the time for performance of, or waive, any of the obligations or other acts of the Parent or the Purchaser under this Agreement, (iii) waive or exercise any of the Company s rights under this Agreement, (iv) waive any condition to the Company s obligations under this Agreement, (v) amend the Company Charter or Company

Bylaws, (vi) authorize any agreement between the Company or any of the Subsidiaries of the Company, on the one hand, and the Parent, the Purchaser or any of their Affiliates, on the other hand, or (vii) make any other determination with respect to any action to be taken or not to be taken by or on behalf of the Company relating to this Agreement or the Transactions. For purposes of considering any matter set forth in this Section 1.3(c), the Continuing Directors shall be permitted to meet without the presence of the other directors. The Continuing Directors shall have the authority to retain such counsel (which may include current counsel to the Company) and other advisors at the expense of the Company as determined by the Continuing Directors and shall have the authority to institute any action on behalf of the Company to enforce performance of this Agreement or any of the Company s rights hereunder.

Section 1.4 Top-Up Option.

(a) Grant and Availability of Top-Up Option. Subject to the terms and conditions set forth herein, the Company hereby grants to the Purchaser an irrevocable option (the Top-Up Option) to purchase, at a price per share equal to the Offer Price, that number of newly issued Shares (the Top-Up Option Shares) equal to the lowest number of Shares that, when added to the number of Shares owned by the Purchaser, the Parent and their wholly owned Subsidiaries at the time of exercise of the Top-Up Option (including all Shares validly tendered and not properly withdrawn in the Offer at the Share Acceptance Time but excluding Shares tendered pursuant to guaranteed delivery procedures that have not yet been delivered in settlement or satisfaction of such guarantee), constitutes one Share more than 90% of all outstanding Shares (assuming the issuance of the Top-Up Option Shares). The Top-Up Option shall only be exercised one time by the Purchaser in whole but not in part. The Top-Up Option shall be exercised by the Purchaser (and the Parent shall cause the Purchaser to exercise the Top-Up Option) promptly (but in no event later than one (1) Business Day) after the Share Acceptance Time or the expiration of a Subsequent Offering Period, as applicable, if (i) at the Share Acceptance Time or the expiration of any such Subsequent Offering Period, as applicable, the Parent, the Purchaser or any wholly owned Subsidiary own in the aggregate at least 75% of all Shares then outstanding (excluding Shares tendered pursuant to guaranteed delivery procedures that have not yet been delivered in settlement or satisfaction of such guarantee) and (ii) after giving effect to the exercise of the Top-Up Option, the Parent, the Purchaser and any wholly owned Subsidiary of the Parent or the Purchaser would own in the aggregate one share more than 90% of the number of outstanding Shares (after giving effect to the issuance of the Top-Up Option Shares but excluding Shares tendered pursuant to guaranteed delivery procedures that have not yet been delivered in settlement or satisfaction of such guarantee); *provided, however*, that the obligation of the Purchaser to exercise the Top-Up Option and the obligation of the Company to deliver Top-Up Option Shares upon the exercise of the Top-Up Option is subject to the conditions, unless waived by the Company, that (x) no provision of any applicable Law and no applicable order, injunction or other judgment shall prohibit the exercise of the Top-Up Option or the delivery of the Top-Up Option Shares in respect of such exercise, (y) upon exercise of the Top-Up Option, the number of Shares owned by the Parent or the Purchaser or any wholly owned Subsidiary of the Parent or the Purchaser (excluding Shares tendered pursuant to guaranteed delivery procedures that have not yet been delivered in settlement or satisfaction of such guarantee) constitutes one Share more than 90% of the number of Shares that will be outstanding immediately after the issuance of the Top-Up Option Shares, and (z) the number of Top-Up Option Shares issued pursuant to the Top-Up Option shall in no event exceed the number of authorized and unissued shares of Company Common Stock less the maximum number of shares of Company Common Stock potentially necessary for issuance with respect to all outstanding Company Stock Options, Company Restricted Stock, Company RSUs or other obligations of the Company. The parties shall cooperate to ensure that the issuance of the Top-Up Option Shares is accomplished consistent with all applicable Laws, including compliance with an applicable exemption from registration of the Top-Up Option Shares under the Securities Act; provided, further, that the Top-Up Option shall terminate concurrently with the termination of this Agreement.

(b) Exercise of Top-Up Option. Upon the exercise of the Top-Up Option in accordance with Section 1.4(a), the Parent shall so notify the Company and shall set forth in such notice (i) the number of Shares that are expected to be owned by the Parent, the Purchaser or any wholly owned Subsidiary of the

Parent or the Purchaser immediately preceding the purchase of the Top-Up Option Shares and (ii) a place and time for the closing of the purchase of the Top-Up Option Shares (which, subject to applicable Law and any required regulatory approvals, shall be effected as promptly as practicable and not more than two (2) Business Days after date such notice is delivered to the Company). Such notice shall also include an undertaking signed by the Parent and the Purchaser that, as promptly as practicable following such exercise of the Top-Up Option, the Purchaser shall, and the Parent shall cause the Purchaser to, as promptly as practicable after such exercise and the delivery by the Company of the Top-Up Option Shares, consummate the Merger in accordance with the terms hereof. The Company shall, as soon as practicable following receipt of such notice, notify the Parent and the Purchaser of the number of Shares then outstanding and the number of Top-Up Option Shares. At the closing of the purchase of the Top-Up Option Shares, the Parent or the Purchaser, as the case may be, shall pay the Company the aggregate price required to be paid for the Top-Up Option Shares, and the Company shall cause to be issued to the Parent or the Purchaser, as applicable, a certificate representing the Top-Up Option Shares. The aggregate purchase price payable for the Top-Up Option Shares may be paid by the Parent or the Purchaser (i) in cash or (ii) by executing and delivering to the Company a promissory note having a principal amount equal to the balance of the aggregate purchase price for the Top-Up Option Shares, or some combination thereof. Any such promissory note shall be on terms as provided by the Parent or the Purchaser, which terms shall be reasonably satisfactory to the Company. Upon the delivery of the appropriate exercise notice and the tender of the consideration described above, the Purchaser shall, to the extent permitted by applicable Law, be deemed to be the holder of record of the Top-Up Option Shares issuable upon that exercise, notwithstanding that certificates representing those Top-Up Option Shares shall not then be actually delivered to the Purchaser or the Company shall have failed to refused to designate the account described above.

(c) Accredited Investor Status. The parties shall cooperate to ensure that the issuance of the Top-Up Option Shares is accomplished consistent with all applicable Law. Consistent therewith, the Parent and the Purchaser acknowledge that the Top-Up Option Shares that the Purchaser may acquire upon exercise of the Top-Up Option will not be registered under the Securities Act of 1933, as amended (the Securities Act), and will be issued in reliance upon an exemption thereunder for transactions not involving a public offering. Each of the Parent and the Purchaser hereby represents and warrants to the Company that the Purchaser will be upon the purchase of the Top-Up Option Shares an accredited investor, as defined in Rule 501 of Regulation D under the Securities Act. The Purchaser agrees that the Top-Up Option and the Top-Up Option Shares to be acquired upon exercise of the Top-Up Option are being and will be acquired by the Purchaser for the purpose of investment and not with a view to, or for resale in connection with, any distribution thereof (within the meaning of the Securities Act).

ARTICLE II

THE MERGER

Section 2.1 The Merger.

(a) Effect of Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the Delaware General Corporation Law, as amended (the DGCL), at the Effective Time, the Purchaser shall be merged with and into the Company. As a result of the Merger, the separate corporate existence of the Purchaser shall cease, and the Company shall continue as the surviving corporation of the Merger (the Surviving Corporation). The Merger shall have the effects set forth in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, at the Effective Time, all of the property, rights, privileges, immunities, powers and franchises of the Company and the Purchaser shall vest in the Surviving Corporation, and all of the debts, liabilities and duties of the Company and the Purchaser shall become the debts, liabilities and duties of the Surviving Corporation. Notwithstanding the foregoing, from and after the Effective Time, and contingent and effective on the effectiveness of the Merger, the Surviving Corporation agrees to assume and will perform all obligations of the Company under the Agreement and Plan of Merger by and among the Company, Starsky Merger Sub, Inc., Starsky Acquisition

Sub, Inc., Chestnut Medical Technologies, Inc. and CMT SR, Inc. dated as of June 2, 2009 (the Chestnut Merger Agreement). Without limiting the generality of the foregoing, the Surviving Corporation shall pay any additional consideration that may become payable to the former shareholders of Chestnut Medical Technologies, Inc. after the Effective Time.

(b) Charter and Bylaws. At the Effective Time, the Company Charter shall, by virtue of the Merger, be amended and restated in its entirety to read as the certificate of incorporation of the Purchaser in effect immediately prior to the Effective Time, except that all references therein to the Purchaser shall be deemed to be references to the Surviving Corporation, until thereafter changed or amended as provided therein or by applicable Law; *provided, however*, that Article I thereof shall read as follows: The name of the Corporation is ev3 Inc. The bylaws of the Purchaser, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation, except that all references therein to the Purchaser shall be deemed to be references to the Surviving Corporation, until thereafter changed or amended as provided therein or by applicable Law.

(c) Directors and Officers. The directors of the Purchaser immediately prior to the Effective Time shall, from and after the Effective Time, be the initial directors of the Surviving Corporation, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Corporation until their respective successors shall have been duly elected, designated or qualified, or until their earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation. The officers of the Purchaser immediately prior to the Effective Time, from and after the Effective Time, shall continue as the officers of the Surviving Corporation, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Corporation until their respective successors shall have been duly elected, designated or qualified, or until their earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation.

(d) Other Conveyance Documents. If at any time after the Effective Time, the Surviving Corporation shall determine, in its sole discretion, that any deeds, bills of sale, instruments of conveyance, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of either of the Company or the Purchaser acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, then the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of either the Company or the Purchaser, all such deeds, bills of sale, instruments of conveyance, assignments and assurances and to take and do, in the name and on behalf of each of such corporations or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title or interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise to carry out this Agreement.

Section 2.2 Closing and Effective Time of the Merger. The closing of the Merger (the Closing) shall take place at 10:00 a.m., Central Time, on a date to be specified by the parties (the Closing Date), such date to be no later than the third (3rd) Business Day after satisfaction or waiver of all of the conditions set forth in Article VII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions at the Closing), at the offices of Oppenheimer Wolff & Donnelly LLP, Plaza VII, Suite 3300, 45 South Seventh Street, Minneapolis, MN 55402, unless another time, date or place is agreed to in writing by the parties hereto. On the Closing Date, or on such other date as the Parent and the Company may agree to in writing, the Parent, the Purchaser and the Company shall cause an appropriate certificate of merger or other appropriate documents (the Certificate of Merger) to be executed and filed with the Secretary of State of the State of Delaware in accordance with the relevant provisions of the DGCL and shall make all other filings or recordings required under the DGCL. The Merger shall become effective at the time the Certificate of Merger or other appropriate documents shall have been duly filed with the Secretary of State of the State of Delaware or such other date and time as is specified in the Certificate of Merger or other appropriate documents, such date and time hereinafter referred to as the Effective Time .

Section 2.3 Meeting of Company Stockholders to Approve the Merger.

(a) Stockholder Meeting. If Company Stockholder Approval is required under the DGCL, the Company shall, in accordance with applicable Law, the Company Charter, the Company Bylaws and applicable Securities Exchange Rules, duly call, give notice of, convene and hold a special meeting of the Company Stockholders (including any adjournment or postponement thereof, the Special Meeting) as promptly as practicable after the Share Acceptance Time, for the purpose of considering and voting on the matters requiring Company Stockholder Approval.

(b) Proxy Statement. If Company Stockholder Approval is required under the DGCL, then, in accordance with all applicable Laws, the Company Charter and the Company Bylaws, as promptly as practicable after the Share Acceptance Time, the Company shall (i) prepare and file with the SEC a proxy statement relating to this Agreement and the Transactions, including the Merger (such proxy statement, as amended or supplemented, the Proxy Statement), (ii) subject to Section 6.3(e), include in the Proxy Statement the Company Board Recommendation, (iii) furnish the information required to be provided to the Company Stockholders pursuant to the DGCL and the Exchange Act and (iv) use its reasonable best efforts to solicit from Company Stockholders proxies in favor of the adoption of this Agreement and the approval of the Merger and take all other action reasonably necessary or advisable to secure the approval of stockholders required by the DGCL and any other applicable Law and the Company Charter and Company Bylaws (if applicable) to effect the Merger. The Parent will provide the Company with any information which may be required in order to effectuate the preparation and filing of the Proxy Statement pursuant to this Section 2.3(b). The Company will notify the Parent promptly upon the receipt of any comments from the SEC or its staff in connection with the filing of, or amendments or supplements to, the Proxy Statement. Whenever any event occurs which is required to be set forth in an amendment or supplement to the Proxy Statement, the Company will promptly inform the Parent of such occurrence and cooperate in filing with the SEC or its staff, and/or mailing to Company Stockholders, such amendment or supplement. The Company shall cooperate and provide the Parent (and its counsel) with a reasonable opportunity to review and comment on any amendment or supplement to the Proxy Statement prior to filing such with the SEC, and will provide the Parent with a copy of all such filings made with the SEC. If at any time prior to the Special Meeting any fact or event relating to the Parent or the Purchaser or any of their Affiliates that is required by Law to be set forth in an amendment or supplement to the Proxy Statement should occur or be discovered by the Parent or the Purchaser, the Parent or the Purchaser shall, promptly after becoming aware thereof, inform the Company of such fact or event.

(c) Voting of Shares by Parent. At the Special Meeting or any postponement or adjournment thereof, the Parent shall vote, or cause to be voted, all of the Shares then owned of record by the Parent or the Purchaser or with respect to which the Parent or the Purchaser otherwise has, directly or indirectly, voting power in favor of the adoption of this Agreement and approval of the Merger and the Parent shall use its reasonable best efforts to deliver or provide (or cause to be delivered or provided), in its capacity as a stockholder of the Company, any other approvals that are required by applicable Law to effect the Merger.

Section 2.4 Merger Without Meeting of Stockholders. Notwithstanding the terms of Section 2.3, if after the Share Acceptance Time and, if applicable, the expiration of any Subsequent Offering Period provided by the Purchaser in accordance with this Agreement or the Purchaser s exercise of the Top-Up Option, the Parent and the Purchaser shall then hold of record, in the aggregate, at least 90% of the outstanding shares of each class of capital stock of the Company entitled to vote on the adoption of this Agreement under applicable Law (the Short Form Threshold), the parties hereto agree to take all necessary and appropriate action to cause the Merger to become effective as promptly as practicable, but no later than the time set forth in Section 2.2, without a meeting of Company Stockholders in accordance with Section 253 of the DGCL.

ARTICLE III

CONVERSION OF SHARES

Section 3.1 Conversion of Securities. At the Effective Time, pursuant to this Agreement and by virtue of the Merger and without any action on the part of the Company, the Purchaser or the holder of any Shares or any shares of capital stock of the Purchaser:

(a) Each share of common stock, $0.01 par value, of the Purchaser issued and outstanding immediately prior to the Effective Time shall convert into and become one newly issued, fully paid and non-assessable share of common stock of the Surviving Corporation.

(b) All shares of Company Common Stock that are owned by the Company as treasury stock and any shares of Company Common Stock owned by the Parent or the Purchaser immediately prior to the Effective Time (whether pursuant to the Offer or otherwise) shall be cancelled and retired and shall cease to exist, and no payment or distribution shall be made or delivered with respect thereto.

(c) Except as otherwise provided in Section 3.4, each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than shares of Company Common Stock to be cancelled pursuant to Section 3.1(b) and Dissenting Shares) shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into the right to receive an amount in cash, payable to the holder thereon, without any interest thereon, equal to the Offer Price (the Merger Consideration). At the Effective Time, all such Shares shall be automatically cancelled and shall cease to exist, and the holders immediately prior to the Effective Time of Shares not represented by certificates (Book Entry Shares) and the holders of certificates that, immediately prior to the Effective Time, represented Shares (the Certificates) shall cease to have any rights with respect to such Shares other than the right to receive, upon transfer of such Book Entry Shares or delivery of such Certificates in accordance with Section 3.2, the Merger Consideration, without any interest thereon, for each such Share held by them.

(d) If at any time between the Agreement Date and the Effective Time any change in the number of outstanding Shares shall occur as a result of a reclassification, recapitalization, stock split (including a reverse stock split), or combination, exchange or readjustment of shares, or any stock dividend or stock distribution with a record date during such period, other than the Merger, the amount of the Merger Consideration as provided in Section 3.1(c) shall be equitably adjusted to reflect such change.

Section 3.2 Exchange of Certificates and Book Entry Shares.

(a) At or prior to the Closing, the Parent shall deliver, in trust, to Wells Fargo Bank, N.A. (the Paying Agent), for the benefit of the Company Stockholders at the Effective Time, sufficient funds for timely payment of the aggregate Merger Consideration (such cash hereinafter referred to as Consideration Fund). In the event the Consideration Fund shall be insufficient to pay the aggregate Merger Consideration contemplated by Section 3.1 (including with respect to former Dissenting Shares held by Company Stockholders who shall have failed to perfect or who shall have effectively withdrawn or lost their rights to appraisal of such Dissenting Shares under Section 262 of the DGCL), the Parent shall promptly deliver, or cause to be delivered, additional funds to the Paying Agent in an amount that is equal to the deficiency required to make such payments.

(b) Promptly after the Effective Time (and in any event within five (5) Business Days after the Effective Time), the Parent shall cause the Paying Agent to mail to each holder of record of Certificates or Book Entry Shares whose shares were converted into the right to receive Merger Consideration pursuant to Section 3.1: (i) a letter of transmittal, in customary form, that shall specify that delivery of such Certificates or transfer of such Book Entry Shares shall be deemed to have occurred, and risk of loss and title to the Certificates or Book Entry Shares, as applicable, shall pass, only upon proper delivery of the Certificates (or affidavits of loss in lieu thereof) or transfer of the Book Entry Shares to the Paying Agent and (ii) instructions for use in effecting the surrender of the Certificates or transfer of the Book Entry Shares in

exchange for payment of the Merger Consideration in customary form. Upon receipt of an agent s message by the Paying Agent in connection with the transfer of a Book Entry Share or surrender of a Certificate for cancellation to the Paying Agent, in each case together with such letter of transmittal, duly executed and completed in accordance with the instructions thereto, and with such other documents as may be required pursuant to such instructions, the holder of such Book Entry Share or Certificate shall be entitled to receive in exchange therefor, subject to any required withholding of Taxes, the Merger Consideration pursuant to the provisions of this Article III, and the Book Entry Share so transferred or Certificate so surrendered shall forthwith be cancelled. No interest will be paid to holders of Book Entry Shares or Certificates in connection with, or accrued on, the Merger Consideration. If any Merger Consideration is to be paid to any natural person or any corporation, partnership, limited liability company, association, trust or other entity or organization, including any Governmental Entity (Person) other than a Person in whose name the Book Entry Share transferred or Certificate surrendered in exchange therefor is registered, it shall be a condition of such exchange that the Person requesting such exchange shall pay to the Paying Agent any transfer or other Taxes required by reason of payment of the Merger Consideration to a Person other than the registered holder of the Book Entry Share transferred or Certificate surrendered, or shall establish to the reasonable satisfaction of the Paying Agent that such Tax has been paid or is not applicable.

(c) The Consideration Fund may be invested by the Paying Agent as directed by the Parent or the Surviving Corporation. Earnings on the Consideration Fund in excess of the amounts payable to Company Stockholders shall be the sole and exclusive property of the Parent and the Surviving Corporation and shall be paid to the Parent or the Surviving Corporation, as the Parent directs. No investment of the Consideration Fund shall relieve the Parent, the Surviving Corporation or the Paying Agent from promptly making the payments required by this Article III, and following any losses from any such investment, the Parent shall promptly provide additional cash funds to the Paying Agent for the benefit of the Company Stockholder at the Effective Time in the amount of such losses, which additional funds will be deemed to be part of the Consideration Fund.

(d) At and after the Effective Time, there shall be no transfers on the stock transfer books of the Company of the shares of Company Common Stock that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates or Book Entry Shares are presented to the Surviving Corporation or the Paying Agent for any reason, they shall be cancelled and exchanged for the Merger Consideration pursuant to this Article III, except as otherwise provided by Law.

(e) Any portion of the Consideration Fund (including the proceeds of any investments thereof) that remains unclaimed by the former Company Stockholders six (6) months after the Effective Time shall be delivered to the Surviving Corporation. Any holders of Certificates or Book Entry Shares who have not theretofore complied with this Article III with respect to such Certificates or Book Entry Shares shall thereafter look only to the Surviving Corporation for payment of their claim for Merger Consideration in respect thereof.

(f) Notwithstanding the foregoing, neither the Paying Agent nor any party hereto shall be liable to any Person in respect of cash from the Consideration Fund delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. If any Certificate or Book Entry Share shall not have been surrendered or transferred prior to the date on which any Merger Consideration in respect thereof would otherwise escheat to or become the property of any Governmental Entity, any such Merger Consideration in respect of such Certificate or Book Entry Share shall, to the extent permitted by applicable Law, become the property of the Surviving Corporation, and any holder of such Certificate or Book Entry Share who has not theretofore complied with this Article III with respect thereto shall thereafter look only to the Surviving Corporation for payment of their claim for Merger Consideration in respect thereof. If any Certificate or Book-Entry Share shall not have been surrendered prior to two (2) years after the Effective Time, any such Merger Consideration in respect of such Certificate or Book Entry Share shall, to the extent permitted by applicable Law, become the property of the Surviving Corporation, free and clear of all claims or interest of any Person previously entitled thereto.

(g) If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact (such affidavit shall be in a form reasonably satisfactory to the Parent and the Paying Agent) by the Person claiming such certificate to be lost, stolen or destroyed, and, if required by the Parent, the posting by such Person of a bond in such amount as Parent may reasonably direct as indemnity against any claim that may be made against it or the Surviving Corporation with respect to such Certificate, the Paying Agent shall issue in exchange for such lost, stolen or destroyed Certificate the Merger Consideration to which such Person is entitled in respect of such Certificate pursuant to this Article III.

Section 3.3 Shares of Dissenting Stockholders.

(a) Notwithstanding anything in this Agreement to the contrary, other than as provided in Section 3.3(b), any Shares that are issued and outstanding immediately prior to the Effective Time and held by a Company Stockholder who has not voted in favor of the Merger or consented thereto in writing and who has demanded properly in writing appraisal for such shares of Company Common Stock in accordance with Section 262 of the DGCL (Dissenting Shares) shall not be converted into the right to receive the Merger Consideration unless and until such Company Stockholder shall have effectively withdrawn or lost (through failure to perfect or otherwise) such stockholder s right to obtain payment of the fair value of such stockholder s Dissenting Shares under the DGCL, but shall instead be entitled only to such rights with respect to such Dissenting Shares as may be granted to such stockholder under the DGCL. From and after the Effective Time, Dissenting Shares shall not be entitled to vote for any purpose or be entitled to the payment of dividends or other distributions (except dividends or other distributions payable to stockholders of record prior to the Effective Time). The Company shall give the Parent (i) prompt notice of any demands for appraisal received by the Company, withdrawals of such demands, and any other instruments, notices, petitions, or other communication received from stockholders or provided to stockholders by the Company with respect to any Dissenting Shares or shares claimed to be Dissenting Shares, and (ii) the opportunity to direct all negotiations and proceedings with respect to demands for appraisal under the DGCL. Except with the prior written consent of the Parent, the Company shall not make any payment with respect to, or offer to settle or settle, any such dissent.

(b) If any Company Stockholder who holds Dissenting Shares effectively withdraws or loses (through failure to perfect or otherwise) such stockholder s right to obtain payment of the fair value of such stockholder s Dissenting Shares under the DGCL, then, as of the later of the Effective Time and the occurrence of such effective withdrawal or loss, such stockholder s Shares shall no longer be Dissenting Shares and, if the occurrence of such effective withdrawal or loss is later than the Effective Time, shall be treated as if they had as of the Effective Time been converted into the right to receive Merger Consideration, without interest, as set forth in Section 3.1(c).

Section 3.4 Company Equity Awards.

(a) As soon as reasonably practicable following the Agreement Date, and in any event prior to the Effective Time, the Company Board (or, if appropriate, any committee administering any Company Equity Plan) shall adopt appropriate resolutions and take all other actions as may be required to provide that (i) each unexercised Company Stock Option that is outstanding immediately prior to the Effective Time, whether or not vested, shall be cancelled, and, in exchange therefor, each former holder of each such cancelled Company Stock Option shall be entitled to receive, in consideration of the cancellation of such Company Stock Option and in settlement therefor, an amount in cash (subject to any applicable withholding of Taxes required by applicable Law) equal to (x) the excess, if any, of (1) the Merger Consideration over (2) the exercise price per share of Company Common Stock previously subject to such Company Stock Option, multiplied by (y) the total number of Shares previously subject to such Company Stock Option, whether or not vested (such amount, the Option Amount); (ii) each share of Company Restricted Stock that is outstanding immediately prior to the Effective Time shall vest in full and become non-forfeitable effective immediately prior to the Effective Time and shall be cancelled at the Effective Time and converted into the right to receive the Merger Consideration pursuant to Section 3.1(c) (subject to any applicable

withholding of Taxes required by applicable Law), and (iii) each Company RSU that is outstanding immediately prior to the Effective Time shall vest in full effective immediately prior to the Effective Time and the Shares issued thereunder shall be cancelled at the Effective Time and converted into the right to receive the Merger Consideration pursuant to Section 3.1(c) (subject to any applicable withholding of Taxes required by applicable Law). All amounts payable pursuant to this Section 3.4 shall be paid as promptly as practicable following the Effective Time, and in any event no later than ten (10) Business Days after the Effective Time, without interest, and Parent shall cause the Surviving Corporation to make such payments as promptly as practicable after the Effective Time in accordance with the foregoing and the terms of the Company Stock Options or the applicable Company Equity Plans pursuant to which they were issued.

(b) Within ten (10) Business Days following the Agreement Date, the Company shall provide notice to all holders of Company Stock Options specifying that such Company Stock Options will not be assumed in connection with the Merger and describing the treatment of such Company Stock Options in accordance with this Section 3.4 and the terms of the applicable Company Equity Plan and will permit each holder of a Company Stock Option who desires to exercise all or any portion of such Company Stock Option following receipt of such notice to exercise such Company Stock Option prior to the Effective Time.

(c) The Company s ESPP shall continue to be operated in accordance with its terms and past practice for the current Offering (as defined in the ESPP) (Offering); *provided* that if the Effective Time is expected to occur prior to the end of the current Offering, the Company shall take action to provide for an earlier Purchase Date (as defined in the ESPP) in accordance with Section 5 of the ESPP. Such earlier Purchase Date shall be as close to the Effective Time as is administratively practicable, and the Company shall notify each participant in writing, at least ten (10) days prior to the earlier Purchase Date, that the Purchase Date for his or her option (including for purposes of determining the Purchase Price of such option) has been changed to the earlier Purchase Date and that his or her option will be exercised automatically on the earlier Purchase Date, unless prior to such date he or she has withdrawn from the Offering as provided in Section 11 of the ESPP. The Company shall suspend the commencement of any future Offerings under the ESPP unless and until this Agreement is terminated and shall terminate the ESPP as of the Effective Time.

(d) For purposes of this Agreement:

(i) Company Equity Plans means the Company s Third Amended and Restated 2005 Incentive Plan, the Company s Second Amended and Restated 2005 Incentive Stock Plan, the Company s Amended and Restated 2005 Incentive Stock Plan, the Company s 2005 Incentive Stock Plan, the ev3 LLC Amended and Restated 2003 Incentive Plan, the FoxHollow Technologies, Inc. 2004 Equity Incentive Plan, the FoxHollow Technologies, Inc. 1997 Stock Plan, as amended, the Micro Therapeutics, Inc. Sixth Amended and Restated 1996 Stock Incentive Plan, the Micro Therapeutics, Inc. 1996 Stock Incentive Plan, as amended, the Micro Therapeutics, Inc. 1993 Incentive Stock Option, Nonqualified Stock Option and Restricted Stock Purchase Plan, the Company Robert J. Palmisano Inducement Option Grant Certificate and the ESPP.

(ii) Company Restricted Stock means shares of Company Common Stock that are subject to risk of forfeiture and restrictions on transfer and were issued as restricted stock awards or stock grants under any of the Company Equity Plans.

(iii) Company RSUs means the restricted stock units that provide for the issuance of one or more shares of Company Common Stock upon vesting and were issued as restricted stock unit awards or stock grants under any of the Company Equity Plans.

(iv) Company Stock Option means an option granted under any of the Company Equity Plans, other than the ESPP, to purchase shares of Company Common Stock.

(v) ESPP means the Company Amended and Restated Employee Stock Purchase Plan.

Section 3.5 Withholding Tax. Each of the Purchaser, the Surviving Corporation, and the Parent shall deduct or withhold from the consideration payable to any Person pursuant to Articles II, III or IV hereof such amounts

required to be deducted or withheld with respect to such payment under applicable Tax Law. If the Purchaser, the Surviving Corporation or the Parent, as the case may be, so withholds amounts, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which the Purchaser, the Surviving Corporation, or the Parent, as the case may be, made such deduction or withholding.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as disclosed in (a) the Company SEC Reports filed by the Company prior to the Agreement Date (excluding any disclosure set forth therein under the heading Risk Factors , or any disclosures in any section related to forward-looking statement to the extent that they are predictive, cautionary or forward-looking in nature) or (b) the disclosure schedule of the Company delivered to the Parent concurrently herewith (the Company Disclosure Schedule) (with specific reference to the section of this Agreement to which the information stated in such Company Disclosure Schedule relates; *provided* that (i) disclosure in any section of such Company Disclosure Schedule shall be deemed to be disclosed with respect to any other Section of this Agreement to the extent that it is reasonably apparent from the face of such disclosure that such disclosure is applicable or relevant to such other Section and (ii) the mere inclusion of an item in such Company Disclosure Schedule as an exception to a representation or warranty shall not be deemed an admission that such item represents a material exception or material fact, event or circumstance or that such item has had or would have a Company Material Adverse Effect), the Company represents and warrants to the Parent and the Purchaser as follows:

Section 4.1 Organization.

(a) Each of the Company and its Subsidiaries is a corporation or other entity duly organized and validly existing under the laws of the jurisdiction of its incorporation or organization and has the requisite entity power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted. Each of the Company and its Subsidiaries is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of the business conducted by it makes such qualification or licensing necessary, except where the failure to be so duly qualified or licensed and in good standing would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. The Company has made available to the Parent a copy of its amended and restated certificate of incorporation (the Company Charter) and bylaws (the Company Bylaws), as currently in effect. As of the Agreement Date, the Company is a Target Company as defined in Chapter 80B.01 of the Minnesota Statutes.

(b) For purposes of this Agreement, Company Material Adverse Effect means any material adverse change in, or material adverse effect on, the business, financial condition or results of operations of the Company and its Subsidiaries, taken as a whole; *provided*, *however*, that any change or effect resulting from (i) the industries and markets in which the Company and its Subsidiaries operate, (ii) the United States or the global economy or (iii) the United States financial or securities markets shall be excluded from the determination of Company Material Adverse Effect, in the case of clauses (i), (ii) and (iii), to the extent they have not had, or would reasonably be expected not to have, a materially disproportionate effect on the Company and its Subsidiaries relative to other companies in the same industry as the Company; and *provided further* that any change or effect resulting from the following, shall not constitute, and shall not be considered in determining whether there has occurred, a Company Material Adverse Effect: (1) the execution or the announcement of this Agreement, (2) natural disasters, acts of war, terrorism or sabotage, military actions or the escalation thereof or other *force majeure* events, (3) changes in GAAP or changes in the interpretation of GAAP, or changes in the accounting rules and regulations of the SEC, (4) any enactment or other action required by Law, required by this Agreement or taken at the request of the Parent or the Purchaser, (5) any litigation brought or threatened by stockholders of either the Parent or the

Company (whether on behalf of the Company, the Parent or otherwise) asserting allegations of breach of fiduciary duty relating to this Agreement or violations of securities Laws in connection with the Schedule 14D-9, the Proxy Statement, if any, and each other document required to be filed by the Company with the SEC or required to be distributed or otherwise disseminated to the Company Stockholders in connection with the Transactions (collectively, the Company Disclosure Documents), (6) any changes in Law or interpretations thereof (including any health reform statutes, rules or regulations or interpretations thereof), (7) any action required to comply with the rules and regulations of the SEC or the SEC comment process, in each case, in connection with any Company Disclosure Document, (8) any decrease in the market price or trading volume of Company Common Stock (but not the underlying cause of such decrease), (9) any failure by the Company to meet any projections, forecasts or revenue or earnings predictions, or any predictions or expectations of the Company or of any securities analysts (but not the underlying cause of such failure), or (10) any fluctuations in foreign currency exchange rates.

Section 4.2 Capitalization.

(a) The authorized capital stock of the Company consists of (i) 300,000,000 shares of Company Common Stock, par value one cent ($0.01) per share, of which 113,940,546 are issued and outstanding as of May 27, 2010 and (ii) 100,000,000 shares of preferred stock, par value $0.01 per share, none of which are issued or outstanding on the Agreement Date. All of the outstanding shares of the Company s capital stock are duly authorized, validly issued, fully paid, non-assessable and free of preemptive rights. As of the Agreement Date, except as set forth in Section 4.2 of the Company Disclosure Schedule, there are, and at the Share Acceptance Time there will be, no existing (i) shares of any class of capital stock or options, warrants, calls, subscriptions or other rights, convertible securities, agreements or commitments of any character obligating the Company or any of its Subsidiaries to issue, transfer or sell any shares of capital stock or other equity interest in, the Company or any of its Subsidiaries, (ii) contractual obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any capital stock of the Company or any of its Subsidiaries or (iii) voting trusts or similar agreements to which the Company is a party with respect to the voting of the capital stock of the Company.

(b) All of the outstanding shares of capital stock or equivalent equity interests of each of the Company s Subsidiaries are owned of record and beneficially, directly or indirectly, by the Company free and clear of all material liens, pledges, security interests or other encumbrances. For purposes of this Agreement, Subsidiary means, as to any Person, any corporation, partnership, limited liability company, association or other business entity (i) of which such Person directly or indirectly owns securities or other equity interests representing more than 50% of the aggregate voting power or (ii) of which such Person possesses more than 50% of the right to elect directors or Persons holding similar positions.

(c) Neither the Company nor any of its Subsidiaries owns any interest or investment (whether equity or debt) in any corporation, partnership, joint venture, trust or other entity, other than a Subsidiary of the Company.

Section 4.3 Authorization; Validity of Agreement; Company Action. The Company has the requisite corporate power and authority to execute and deliver this Agreement and, subject to obtaining the Company Stockholder Approval, if required, to consummate the Transactions. The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the Offer, the issuance of the Top-Up Option Shares (assuming the Top-Up Option is exercised pursuant to Section 1.4), the Merger and the other Transactions have been duly authorized by the Company Board and, except, in the case of the Merger, for the Company Stockholder Approval, if required, and for the filing of the Certificate of Merger or other appropriate documents with the Secretary of State of the State of Delaware, no other corporate action on the part of the Company is necessary to authorize the execution and delivery by the Company of this Agreement and the consummation by it of the Transactions. This Agreement has been duly executed and delivered by the Company and, assuming due and valid authorization, execution and delivery hereof by the Parent and the Purchaser, is a valid and binding obligation of the Company enforceable against the Company in accordance with its terms,

except that (a) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar Laws, now or hereafter in effect, affecting creditors rights and remedies generally and (b) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

Section 4.4 Consents and Approvals; No Violations. The execution and delivery of this Agreement by the Company do not, and the performance by the Company of this Agreement and the consummation by the Company of the Transactions will not, (a) violate any provision of the Company Charter or the Company Bylaws, (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, contract, agreement or other obligation, whether written or oral (Contract), to which the Company or any of its Subsidiaries is a party or by which any of them or any of their properties or assets is bound, (c) violate any Law applicable to the Company, any of its Subsidiaries or any of their properties or assets or (d) other than in connection with or compliance with (i) the DGCL, (ii) requirements under other state corporation Laws, (iii) the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the HSR Act) and other Antitrust Laws, (iv) Securities Exchange Rules, (v) the Exchange Act and (vi) such filings as may be required under Chapter 80B of the Minnesota Statutes, require the Company to make any filing or registration with or notification to, or require the Company to obtain any authorization, consent or approval of, any court, legislative, executive or regulatory authority or agency (a Governmental Entity); except, in the case of clauses (b), (c) and (d), for such violations, breaches or defaults that, or filings, registrations, notifications, authorizations, consents or approvals the failure of which to make or obtain, would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect and would not materially adversely affect the ability of the Company to consummate the Transactions.

Section 4.5 SEC Reports; Disclosure Controls and Procedures.

(a) The Company has filed all reports and other documents with the SEC required to be filed by the Company since December 31, 2006 (the Company SEC Reports). As of their respective filing dates, the Company SEC Reports (i) complied in all material respects with, to the extent in effect at the time of filing, the applicable requirements of the Securities Act and the Exchange Act and (ii) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Each of the financial statements (including the related notes) of the Company included in the Company SEC Reports complied at the time it was filed as to form in all material respects with the applicable accounting requirements and the published rules and regulations of the SEC with respect thereto in effect at the time of such filing, was prepared in accordance with generally accepted accounting principles in the United States (GAAP) (except, in the case of unaudited statements, as permitted by the rules and regulations of the SEC) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly presented in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of the respective dates thereof and the consolidated results of their operations and cash flows for the respective periods then ended (subject, in the case of unaudited statements, to normal year-end adjustments). Since the Balance Sheet Date, there has been no change in the Company s accounting policies or the methods of making accounting estimates or changes in estimates that are material to the Company s financial statements, except as described in the Company SEC Reports or except as may be required by any regulatory authority.

(b) Since December 31, 2006, the Company and each of its Subsidiaries has had in place disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Exchange Act) reasonably designed and maintained to ensure that all information (both financial and non-financial) required to be disclosed by the Company in the reports that it files or submits to the SEC under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC and that such information is accumulated and communicated to the Company s

management as appropriate to allow timely decisions regarding required disclosure and to make the certifications of the chief executive officer and chief financial officer of the Company required under the Exchange Act with respect to such reports. The Company maintains internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management s general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets, (iii) access to assets is permitted only in accordance with management s general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

Section 4.6 No Undisclosed Liabilities. Neither the Company nor any of its Subsidiaries has, since April 4, 2010 (the Balance Sheet Date), incurred any liabilities or obligations of any nature whatsoever (whether accrued, absolute, matured, determined, contingent or otherwise and whether or not required to be reflected in the Company s financial statements in accordance with GAAP), except for (a) liabilities and obligations incurred since the Balance Sheet Date in the ordinary course of business, (b) liabilities and obligations incurred in connection with the Transactions, (c) liabilities and obligations that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect and (d) liabilities and obligations discharged or paid in full prior to the date of this Agreement in the ordinary course of business consistent with past practice.

Section 4.7 Absence of Certain Changes. Since the Balance Sheet Date through the Agreement Date, (a) the Company has not suffered a Company Material Adverse Effect, (b) there has not occurred any change, event, circumstance or development that is reasonably likely to have a Company Material Adverse Effect and (c) except as contemplated by this Agreement, the Company has not taken any action that would be prohibited by Section 6.1(a)(i) through Section 6.1(a)(xiii) if taken after the Agreement Date.

Section 4.8 Material Contracts.

(a) As of the Agreement Date, the Company is not a party to or bound by any Contract:

(i) that would be required to be filed by the Company as a material contract pursuant to Item 601(b)(10) of Regulation S-K of the SEC;

(ii) that contains any non-competition or other agreement that limits the ability of the Company or any of its Subsidiaries to compete in any line of business, in any geographic area or with any person;

(iii) that creates any partnership, joint venture or similar entity with respect to any material business of the Company and its Subsidiaries, taken as a whole;

(iv) that would, individually or in the aggregate, prevent, materially delay or materially impede the Company s ability to consummate the Transactions;

(v) that is an indenture, credit agreement, loan agreement, security agreement, guarantee, note, mortgage or other agreement providing for indebtedness in excess of $1,000,000, other than intercompany agreements;

(vi) that is a written contract (other than this Agreement) for the sale of any of its assets after the Agreement Date in excess of $1,000,000, other than in the ordinary course of business consistent with past practice;

(vii) under which the Company and the Company s Subsidiaries are expected to make annual expenditures or receive annual revenues in excess of $1,000,000 during the current or a subsequent fiscal year;

(viii) containing a right of first refusal, right of first negotiation or right of first offer in favor of a party other than the Company or its Subsidiaries;

(ix) that obligates the Company to file a registration statement under the Securities Act of 1933 which filing has not yet been made; or

(x) that is an interest rate, equity or other swap or derivative instrument.

Each such contract described in clauses (i)-(x) is referred to herein as a Material Contract.

Each Material Contract is a valid and binding obligation of the Company enforceable against the Company in accordance with its terms and, to the Company s Knowledge, each other party thereto, and is in full force and effect, and the Company has performed in all material respects all obligations required to be performed by it to the Agreement Date under each Material Contract and, to the Company s Knowledge, each other party to each Material Contract has performed in all material respects all obligations required to be performed by it under such Material Contract. The Company has not received written notice, nor does the Company have Knowledge, of any material violation of or material default of any obligation under (or any condition which with the passage of time or the giving of notice would cause such a material violation of or material default under) any Material Contract to which it is a party or by which it or any of its properties or assets is bound. For purposes of this Agreement, Company s Knowledge or Knowledge of the Company means such facts and other information that as of the date of determination are actually known to the individuals set forth on Section 4.8 of the Company Disclosure Schedule.

Section 4.9 Employee Benefit Plans; ERISA.

(a) Section 4.9(a) of the Company Disclosure Schedule lists, as of the date of this Agreement, each material employee benefit plan (as hereinafter defined) (i) that is currently maintained, contributed (or required to be contributed) to, or sponsored by the Company or any of its Subsidiaries, or (ii) to which the Company or any of its Subsidiaries is a party, or (iii) with respect to which the Company or any of its Subsidiaries has any material liability, including any material contingent liability, for the payment or delivery of any premiums, compensation or benefits (collectively, the Benefit Plans). For purposes of the preceding sentence, an employee benefit plan is any of the following that benefits or is intended to benefit any current or former employee or director (whether or not an employee) of, or consultant or other service provider (whether or not an employee) with respect to the Company or an ERISA Affiliate (as defined in Section 4.9(b)), or the beneficiaries of any of them: (A) a plan described in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (ERISA); (B) a stock bonus, stock option, stock purchase, restricted stock, restricted stock unit, stock appreciation right, or other equity-based plan, policy, program, agreement or arrangement; or (C) an incentive, bonus, deferred compensation, welfare, retiree medical or life insurance, retirement, supplemental retirement, termination, salary continuation, severance, change in control, and any material fringe benefit or other material benefit plan, policy, program, agreement or arrangement, whether written or unwritten. With respect to each Benefit Plan, the Company has delivered to Parent a true and complete copy of each of the following, together with all amendments: (i) all documents embodying the Benefit Plan (or, where a Benefit Plan has not been reduced to writing, a summary of all material Plan terms), (ii) in the case of any funded Benefit Plan, the trust agreement or similar instrument, (iii) for each Benefit Plan subject to the requirement that annual reports be filed on a Form 5500, the two most recently filed annual reports, with schedules, financial statements and auditor s opinion attached, (iv) in the case of each Benefit Plan intended to be qualified under Section 401(a) of the Code, the most recent IRS determination or opinion letter applicable to the Benefit Plan, (v) all related custodial agreements, insurance policies (including fiduciary liability insurance covering the fiduciaries of the Benefit Plan), administrative services and similar agreements, and investment advisory or investment management agreements, if any, and (vi) the most recent summary plan description, summaries of material modifications or similar summary and any employee handbook referencing the Benefit Plan.

(b) None of the Company or any of its Subsidiaries or any other person (including an entity) that together with the Company or any of its Subsidiaries is or at any relevant time was treated as a single employer under Section 414(b), (c), (m) or (o) of the Code (each, together with the Company and any of its

Subsidiaries, an ERISA Affiliate) has ever contributed or been required to contribute to, or has ever sponsored, maintained or participated in, (i) a pension plan (within the meaning of Section 3(2) of ERISA) subject to Section 412 of the Code or Title IV of ERISA, (ii) a multiemployer plan (within the meaning of Section 3(37) or 4001(a)(3) of ERISA), or (iii) a single employer pension plan (within the meaning of Section 4001(a)(15) of ERISA) for which an ERISA Affiliate would reasonably be expected to incur liability under Section 4063 or 4064 of ERISA. Except as described in Section 4.9(b) of the Company Disclosure Schedule, the transactions contemplated by this Agreement will not, by themselves or together with any other event, cause or result in the payment, acceleration or vesting of any payment, right or benefit under any Benefit Plan.

(c) Each Benefit Plan that is intended to be qualified under Section 401(a) of the Code is the subject of a favorable determination or opinion letter from the Internal Revenue Service (the IRS). No such determination or opinion letter has been revoked, and, to the Company s knowledge, revocation has not been threatened. To the Company s knowledge, no such Benefit Plan has been amended or operated since the date of its most recent determination or opinion letter in any respect, and no act or omission has occurred, that would adversely affect its qualification.

(d) Each Benefit Plan has been maintained and administered at all times in accordance with its material terms. Each Benefit Plan, including any associated trust or fund, has been established and administered in material compliance with the applicable provisions of ERISA, the Code and other applicable Law (including, where applicable, non-U.S. Law), and, to the knowledge of the Company, nothing has occurred with respect to any Benefit Plan that has subjected or could reasonably be expected to subject the Company or any ERISA Affiliate to any liability or penalty under Section 502 of ERISA or to any tax under Chapter 43 of the Code. All filings and reports with respect to each Benefit Plan required to have been submitted to the IRS, the United States Department of Labor, or any other Governmental Entity have been duly and timely submitted.

(e) No Benefit Plan provides health or life insurance benefits following retirement or other termination of employment, and neither the Company nor any ERISA Affiliate has any obligation to provide any such benefits following retirement or other termination of employment, in each case except for benefit continuation coverage to the extent required under Part 6 of Subtitle B of Title I of ERISA.

(f) With respect to each Benefit Plan, no administrative investigation, inquiry, audit or other proceeding by the IRS, U.S. Department of Labor or other Governmental Entity, and no other lawsuit, claim, or other controversy, other than claims for benefits in the ordinary course and proceedings with respect to qualified domestic relations orders, is pending or, to the knowledge of the Company, threatened.

(g) With respect to each Benefit Plan, all contributions (including salary reduction contributions), premiums and other payments (i) to the extent due, have been timely made, and (ii) to the extent not yet due, have been appropriately accrued on the books of the Company or, if applicable, any of its Subsidiaries.

(h) Each Benefit Plan subject to Section 409A of the Code (Section 409A) has been operated in good faith compliance with Section 409A. No Benefit Plan, which is subject to the requirements of Section 409A, violates such requirements. All Company Options granted by the Company after October 3, 2004 or which vest or vested (in whole or in part) after December 31, 2004, have (or, if already terminated, had) an exercise price that was not less than the fair market value of the underlying stock as of the date such Company Option was granted. The Company is not a party to, nor is otherwise obligated under, any contract, agreement, plan or arrangement that provides for the gross-up of Tax imposed by Section 409A(a)(1)(B) of the Code.

(i) Except for the Benefit Plans listed in Section 4.9(i) of the Company Disclosure Schedule, no Benefit Plan is subject to the Laws of a jurisdiction other than the United States of America, whether or not United States Law also applies. For purposes of the preceding sentence, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianna Islands and the Virgin Islands shall be considered jurisdictions other than the United States.

(j) Except for the Benefit Plans listed in Section 4.9(j) of the Company Disclosure Schedule, each Benefit Plan and its related documentation or agreement, summary plan description, or other written communication distributed generally to employees by its terms expressly and adequately reserves the right to amend and terminate such Benefit Plan, and each Plan may be terminated without material liability to the Company or any ERISA Affiliate, except for vested benefits accrued through the date of termination and the administrative and professional costs incurred in such transaction. Except as listed in Section 4.9(j) of the Company Disclosure Schedule, no Benefit Plan subject to ERISA includes in its assets in any securities issued by the Company or any ERISA Affiliate.

(k) Except as listed in Section 4.9(i) of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries: (i) has made any payments, is obligated to make any payments, or is a party to any agreement that could obligate it to make any payments that will be treated as an excess parachute payment under Section 280G of the Code or in the imposition of an excise Tax under Code Section 4999 (or any corresponding provisions of state, local or foreign Tax Law); or (ii) is a party to, nor is otherwise obligated under, any contract, agreement, plan or arrangement that provides for the gross-up of the excise Tax imposed by Code Section 4999.

(l) Neither the Company nor the Company Subsidiaries has made any payments that have, or has been or is a party to any agreement, contract, arrangement or plan that have, resulted or will result, separately or in the aggregate, in the payment of any compensation which would be subject to the deduction limit imposed by Code Section 162(m).

Section 4.10 Litigation.

(a) There is no action, claim, suit, proceeding or governmental investigation pending against or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries that would, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. There are no material outstanding orders, judgments, injunctions or decrees of any Governmental Entity against the Company, any of its Subsidiaries or any of their securities or material assets or properties.

Section 4.11 Compliance with Law; Permits.

(a) The Company and each of its Subsidiaries hold all material permits, licenses, exemptions, consents, certificates, authorizations, registrations, and other approvals from Governmental Entities required to operate their respective businesses as it is being conducted as of the Agreement Date (collectively, the Permits) and all of such Permits are in full force and effect, except where the failure to obtain or have any such Permit would, individually, or in the aggregate not reasonably be expected to have a Company Material Adverse Effect; and no proceeding is pending or, to the knowledge of the Company, threatened to revoke, suspend, cancel, terminate or adversely modify any such Permit. Neither the Company nor any of its Subsidiaries is in violation of, or in default under, any Law, in each case, applicable to the Company or any of its Subsidiaries or any of their respective assets and properties. Notwithstanding the foregoing, this Section 4.11 shall not apply to employee benefit plans, Taxes, environmental matters, labor and employment matters, or regulatory matters, which are the subject exclusively of the representations and warranties in Section 4.9, Section 4.13, Section 4.15, Section 4.16 and Section 4.18, respectively.

(b) None of the Company, any of the Company s Subsidiaries, any of their respective officers or employees, or to the Knowledge of the Company, any of its suppliers, distributors, licensees or agents, or any other Person acting on behalf of the Company or any of its Subsidiaries, directly or indirectly, has (i) made or received any payments in violation of any Law (including the U.S. Foreign Corrupt Practices Act), including any contribution, payment, commission, rebate, promotional allowance or gift of funds or property or any other economic benefit to or from any employee, official or agent of any Governmental Entity where either the contribution, payment, commission, rebate, promotional allowance, gift or other economic benefit, or the purpose thereof, was illegal under any Law (including the U.S. Foreign Corrupt Practices Act) (any such payment, a Prohibited Payment), (ii) provided or received any product or services in violation of any Law (including the U.S. Foreign Corrupt Practices Act), or (iii) been subject to any investigation by any Governmental Entity with regard to any Prohibited Payment.

Section 4.12 Intellectual Property.

(a) Section 4.12 of the Company Disclosure Schedule sets forth all (i) issued patents and pending patent applications, (ii) trademark registrations, service mark registrations, and pending applications for registration thereof, and (iii) copyright registrations and pending copyright applications, in each case that are owned by the Company or any of its Subsidiaries. With respect to each item of Intellectual Property identified in this Section 4.12(a): (x) one or more of the Company and its Subsidiaries owns all right, title, and interest in and to such item, free and clear of all liens; (y) such item is not the subject of any outstanding order, injunction, judgment, decree or ruling enacted, adopted, promulgated or applied by a Governmental Entity or arbitrator (Order) of which the Company has received notice; and (z) no action (other than patent or trademark office actions), suit, proceeding, claim (including inventorship claims), or governmental investigation of which the Company or any Subsidiary has received written notice is pending or, to the Knowledge of the Company, threatened that challenges the validity, enforceability, or ownership of such Intellectual Property. For purposes of this Agreement, Intellectual Property means all rights in patents, patent applications, inventions, invention disclosures, trademarks (whether registered or not), trademark applications, service mark registrations and service mark applications, trade names, trade dress, logos, slogans, uniform resource locators, Internet domain names, Internet domain name applications, corporate names, registered copyrighted works and unregistered copyrightable works (including proprietary software, works of authorship, and other copyrightable works), technology, trade secrets, know-how, formulae, processes, methods, technical documentation, specifications, data, designs and other intellectual property and proprietary rights.

(b) Section 4.12 of the Company Disclosure Schedule sets forth a list of all material Contracts under which the Company or any of its Subsidiaries (i) licenses from a third party material Intellectual Property that is used in the conduct of the business of the Company or any of its Subsidiaries as currently conducted that presently require or that could require payment by the Company or any Subsidiary of royalties or license fees exceeding $1,000,000 in any twelve-month period (such Contracts being referred to as License-In Contracts) and (ii) licenses to a third party any Intellectual Property (such Contracts being referred to as License-Out Contracts). To the Knowledge of the Company, (i) each License-In Contract and License-Out Contract is valid and in full force and effect; (ii) each License-In Contract and License-Out Contract will continue to be valid and in full force and effect on similar terms immediately following the consummation of the Transactions upon meeting the terms and conditions, if any, in each License-In Contract or License-Out Contract, as applicable; and (iii) neither the Company nor any of its Subsidiaries is in material breach of any License-In Contract or License-Out Contract.

(c) To the Knowledge of the Company, one or more of the Company and its Subsidiaries owns or has the right to use all valid Intellectual Property necessary to the conduct of the business of the Company or any of its Subsidiaries as currently conducted.

(d) There is no pending or, to the Knowledge of the Company, threatened, action, claim, suit, proceeding or governmental investigation in which it is alleged that the conduct of the Company s or any of its Subsidiaries business as currently conducted infringes or otherwise violates the Intellectual Property rights of any third party. To the Knowledge of the Company, neither the Company nor any of its Subsidiaries has received any written claim alleging any such infringement or violation.

(e) The Company and its Subsidiaries have taken best efforts to protect and preserve its rights in all Intellectual Property owned by the Company or any of its Subsidiaries that is used in the conduct of the Company s or any of its Subsidiaries business as currently conducted. To the Company s Knowledge, all employees and independent contractors, and consultants to the extent such obligation exists, who have created Intellectual Property used in the conduct of the Company s or any of its Subsidiaries business as currently conducted have assigned to one or more of the Company and its Subsidiaries all of their rights therein, to the extent permitted under Law and to the extent that such rights would not automatically vest with the Company by operation of Law.

Section 4.13 Taxes.

(a)(i) All material Tax Returns required to be filed by or on behalf of the Company or any of its Subsidiaries, or any consolidated, combined, affiliated or unitary group of which the Company or any of its Subsidiaries is a member have been timely filed, (ii) each such Tax Return was true, complete and correct in all material respects, (iii) the Company and each of its Subsidiaries has paid or caused to be paid all material Taxes required to be paid other than Taxes (x) not yet due and payable, or (y) being contested in good faith by appropriate proceedings, and in each case for which the Company has established adequate reserves, (iv) no material audits, assessments of Taxes, other examinations by the United States Internal Revenue Service or any other domestic or foreign governmental authority responsible for the administration of any Taxes (collectively, the Taxing Authorities), or any proceedings or appeals of such proceedings relating to Taxes in respect of the Company or any Subsidiary are presently pending or proposed or threatened in writing and no claim has been made by any Taxing Authority in any jurisdiction in which the Company or any of its Subsidiaries does not file Tax Returns that the Company or any of its Subsidiaries may be subject to Tax in that jurisdiction, and (v) there are no liens for Taxes upon any property or assets of the Company or any of its Subsidiaries except for liens for property Taxes not yet due and payable.

(b) Neither the Company nor any of its Subsidiaries is a party to any agreement providing for the allocation, indemnification, or sharing of Taxes, except for any such agreements that (i) are solely between the Company and/or any of its Subsidiaries, and (ii) will terminate as of or prior to the Effective Time.

(c) Neither the Company nor any of its Subsidiaries has any actual or potential liability for any Taxes of any Person (other than the Company and its Subsidiaries) under Treasury Regulation Section 1.1502-6 or any similar provision or state, local, or foreign law, or as a transferee or successor, by contract, operation of Law, or otherwise.

(d) The Company and each of its Subsidiaries have withheld, and paid to the appropriate Taxing Authority as required by Law, all amounts required by Law or contract to be withheld from the wages, salaries or other payments to employees, independent contractors, creditors, stockholders, consultants, or any other third party. The Company and each of its Subsidiaries have complied in all respects with all record keeping and reporting requirements in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder, consultant, or other third party.

(e) Since January 1, 2007, neither the Company nor any of its Subsidiaries has distributed stock of another corporation, or has had its stock distributed by another corporation, in a transaction that was governed, or purported or intended to be governed, in whole or in part, by Section 355 of the Code.

(f) Neither the Company nor any of its Subsidiaries has engaged in any reportable transaction or listed transaction identified pursuant to Treasury Regulation Section 1.6011-4 or any similar provision or state, local, or foreign law.

(g) Neither the Company nor any of its Subsidiaries has extended or waived any application of any statute of limitation of any jurisdiction regarding the assessment or collection of any Tax.

(h) Neither the Company nor any of its Subsidiaries are, or were during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code, a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code.

(i) Since December 31, 2006, except as set forth in the Tax Returns described in Section 4.13(k), neither the Company nor any of its Subsidiaries has (i) changed any Tax accounting methods, policies, or practices, except as required by a change in applicable Law, (ii) made, revoked, or amended any material Tax election, (iii) filed any material amended Tax Return or claim for refund, (iv) entered unto any closing agreement affecting any material Tax liability or refund, or (v) settled or compromised any material Tax liability or refund. All financial statements on which Tax Returns were based were prepared in accordance with the then existing United States generally accepted accounting principles (GAAP) applied on a consistent basis throughout the periods indicated.

(j) Neither the Company nor any of its Subsidiaries will be required to include any income in, or exclude any material item of deduction from, taxable income for an taxable Period (or portion thereof) beginning after the Closing Date as a result of any (i) adjustment under Section 481 of the Code (or any similar provision of state, local, or foreign Law) made prior to the Closing Date or (ii) closing agreement as described in Section 7121 of the Code (or any similar provision of state, local, or foreign Law) executed during the six (6) year period ending on the Closing Date.

(k) The Company has made available or will make available to Parent upon request complete and correct copies of all material Tax Returns, supporting work papers, examination reports, cost sharing or similar arrangements, and statements of deficiencies assessed against or agreed to by the Company or any of its Subsidiaries filed by or received by the Company or any of its Subsidiaries since December 31, 2006.

(l) Definitions. (i) Tax or Taxes means any and all taxes, including any interest, penalties, or other additions to tax that may become payable in respect thereof, imposed by any federal, state, local, or foreign government or any agency or political subdivision of any such government, which taxes shall include, without limiting the generality of the foregoing, all income taxes, profits taxes, taxes on gains, alternative minimum taxes, estimated taxes, payroll and employee withholding taxes, unemployment insurance taxes, social security taxes, welfare taxes, disability taxes, severance taxes, license charges, taxes on stock, sales and use taxes, ad valorem taxes, value added taxes, excise taxes, franchise taxes, gross receipts taxes, business license taxes, occupation taxes, real or personal property taxes, stamp taxes, environmental taxes, transfer taxes, workers compensation taxes, and other taxes, fees, duties, levies, customs, tariffs, imposts, assessments, obligations and charges of the same or of a similar nature to any of the foregoing; (ii) Tax Return means any and all returns, reports, information returns, declarations, statements, certificates, bills, schedules, documents, claims for refund, or other written information of or with respect to any Tax which is supplied to or required to be supplied to any Taxing Authority, including any attachments, amendments and supplements thereto

Section 4.14 Tangible Assets. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, the Company and/or one or more of its Subsidiaries have valid title to, or valid leasehold or sublease interests or other comparable contract rights in or relating to, all of the real properties and other tangible assets necessary for the conduct of the business of the Company and its Subsidiaries, taken as a whole, as currently conducted, in each case, free and clear of all imperfections of title, restrictions, encroachments, liens and easements, except (i) liens for current Taxes not yet due and payable, that are payable without penalty or that are being contested in good faith by appropriate proceedings, (ii) such imperfections of title, restrictions, encroachments, liens and easements as do not and could not reasonably be expected to materially detract from or materially interfere with the use or value of the properties subject thereto or affected thereby, or otherwise materially impair business operations involving such properties and (iii) liens securing debt which are reflected on the Company Balance Sheet. There are no written or oral subleases, licenses, occupancy agreements or other contractual obligations that grant the right of use or occupancy of any real property leased by the Company or any Subsidiary (collectively, the Real Property), and there is no person in possession of the Real Property other than the Company and its Subsidiaries. There is no pending, or, to the knowledge of the Company, threatened eminent domain, condemnation or similar proceeding affecting any Real Property leased by the Company or a Subsidiary. To the knowledge of the Company, the material property and equipment of the Company and each Subsidiary that are used in the operations of business are (i) in good operating condition and repair (ordinary wear and tear excepted) and (ii) have been maintained in accordance with normal industry practices. Section 4.14 of the Company Disclosure Schedule lists all Real Property leased by the Company or a Subsidiary, and neither the Company nor any Subsidiary owns any Real Property.

Section 4.15 Environmental.

(a) Neither the Company nor any of its Subsidiaries (i) has received any written notice with respect to the business of, or properties owned or leased by, the Company or any of its Subsidiaries from any Governmental Entity or third party that remains outstanding alleging that the Company or any of its

Subsidiaries is not in compliance with any Laws governing pollution or the protection of human health or the environment, (ii) has caused any release of a hazardous substance (as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.), in excess of a reportable quantity on any property that is used for the business of the Company or any of its Subsidiaries which release remains unresolved, (iii) currently owns, operates or leases or has formerly owned, operated or leased any premises that is listed, or to the Company s knowledge, proposed for listing, on the National Priorities List or the Comprehensive Environmental Response, Compensation, and Liability Information System, both as maintained under the Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or on any comparable state governmental lists, or (iv) has received written notification of, and the Company has no knowledge of, any potential responsibility or liability of the Company or any Subsidiary pursuant to the provisions of (1) CERCLA, or (2) any similar Federal, state, local, foreign or other Environmental Law.

(b) The Company and each of its Subsidiaries has obtained all permits required by Environmental Law necessary to enable them to conduct their respective businesses as currently conducted and are in compliance with such permits, except where the failure to obtain or comply with any such Permit would not, individually, or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. All such permits are in full force and effect and, to the Company s knowledge, there are no pending or threatened claims that seek the revocation, cancellation, suspension or any adverse modification of any such permits, except where the failure to have any such Permit would not, individually, or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(c) The Company previously has made available to Parent copies of all environmental site assessments prepared by any person, and permits required under Environmental Laws and all other material correspondence with Governmental Entities in the Company s possession relating to compliance with Environmental Laws.

(d) For purposes of this Agreement, Environmental Laws means any applicable Federal, state or local Laws, in each case as amended and in effect in the jurisdiction in which the applicable site or premises are located, pertaining to the protection of human health, safety or the environment, including without limitation, the following statutes and all regulations promulgated thereunder: CERCLA; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Federal Clean Air Act, 42 U.S.C. § 7401 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq.; the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801 et seq.; the Atomic Energy Act, 42 U.S.C. § 2014 et seq.; any state or local statute of similar effect; and any Laws relating to protection of the environment which regulate the management or disposal of biological agents or substances including medical or infectious wastes.

(e) The representations and warranties contained in this Section 4.15 constitute the sole and exclusive representations and warranties made by the Company concerning environmental matters.

Section 4.16 Labor Matters.

(a) As of the Agreement Date, there are no pending or, to the Knowledge of the Company, threatened strikes, lockouts or work stoppages involving the employees of the Company or any of its Subsidiaries.

(b) As of the Agreement Date, neither the Company nor any of its Subsidiaries is a party to, or bound by, any collective bargaining agreement with a labor union with respect to its Employees located in the United States.

(c) There is no unfair labor practice or labor arbitration proceeding pending or, to the Knowledge of the Company, threatened against the Company or its Subsidiaries, except for any such proceeding that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(d) Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, the Company and its Subsidiaries are in compliance with applicable Laws respecting employment.

Section 4.17 Brokers or Finders. No investment banker, broker, finder, financial advisor or other intermediary, other than J.P. Morgan Securities Inc. and Piper Jaffray & Co., is entitled to any investment banking, brokerage, finder s or similar fee or commission, success fee or contingent fee in connection with this Agreement or the Transactions. The Company has provided Parent with copies of all documents relating to such arrangements, which documents and arrangements have not subsequently been modified. Section 4.17 of the Company Disclosure Schedule itemizes all payments due from the Company or its Subsidiaries in connection with the Transactions.

Section 4.18 Regulatory Compliance.

(a) The businesses of each of the Company and its Subsidiaries are being conducted in compliance with all Laws, including (i) the federal Food, Drug and Cosmetic Act, as amended (including the rules and regulations promulgated thereunder, the FDCA), including without limitation the FDA s current Good Manufacturing Practices; (ii) federal Medicare and Medicaid statutes and related state or local statutes or regulations; (iii) any comparable foreign Laws for any of the foregoing, including laws and regulations promulgated under the Medical Device Directive in the European Union (the MDD); (iv) federal or state criminal or civil Laws (including the federal Anti-Kickback Statute (42 U.S.C. §1320a-7(b)), Stark Law (42 U.S.C. §1395nn), False Claims Act (42 U.S.C. §1320a-7b(a)), Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §1320d et. seq., and any comparable state or local laws); and (v) state licensing, disclosure and reporting requirements. Since December 31, 2005, the manufacture of products by the Company and its Subsidiaries has been conducted in material compliance with all applicable Laws, including the FDA s current Good Manufacturing Practices. In addition, since December 31, 2005, the Company and its Subsidiaries have been in material compliance with all other applicable FDA requirements, including, but not limited to, registration and listing requirements set forth in 21 U.S.C. Section 360 and 21 C.F.R. Part 207 and 807. For the purposes of this Agreement, Good Manufacturing Practices means the requirements set forth in the quality systems regulations for medical devices contained in 21 C.F.R. Part 820.

(b) Neither the Company nor any of its Subsidiaries has Knowledge of any pending or threatened enforcement action by the FDA or any other Governmental Entity that has jurisdiction over the operations of the Company and its Subsidiaries.

(c) All material reports, documents, claims, permits and notices required to be filed, maintained or furnished to the FDA or any other Governmental Entity by the Company and its Subsidiaries have been so filed, maintained or furnished. All such reports, documents, claims and notices were complete and accurate in all material respects on the date filed (or were corrected in or supplemented by a subsequent filing) such that no liability exists with respect to such filing.

(d) Neither the Company nor any of its Subsidiaries has, since December 31, 2005, received any FDA Form 483, notice of adverse finding, notices, untitled letters or other correspondence or notice from the FDA, or other Governmental Entity (i) alleging or asserting noncompliance with any applicable Laws or Permits or (ii) contesting the investigational device exemption, premarket clearance or approval of, the uses of or the labeling or promotion of any device , as such term is defined in Section 201(h) of the FDCA (a Medical Device).

(e) No Permit issued to the Company or any of its Subsidiaries by the FDA or any other Governmental Entity has, since December 31, 2005, been limited, suspended, modified or revoked.

(f) The Company and its Subsidiaries have not received any written notices, correspondence or other communication from the FDA or any other Governmental Entity since December 31, 2005 requiring the termination, suspension or material modification of any clinical trials conducted by, or on behalf of, the Company or its Subsidiaries, or in which the Company or its Subsidiaries have participated.

(g) Since December 31, 2005, the Company and its Subsidiaries have not either voluntarily or involuntarily initiated, conducted or issued, or caused to be initiated, conducted or issued, any recall, field notifications, field corrections, market withdrawal or replacement, safety alert, warning, dear doctor letter, investigator notice, safety alert or other notice or action relating to an alleged lack of safety, efficacy or regulatory compliance of any product. The Company and its Subsidiaries are not aware of any facts which are reasonably likely to cause (i) the recall, market withdrawal or replacement of any product sold or intended to be sold by the Company or its Subsidiaries, (ii) a change in the marketing classification or a material change in the labeling of any such products, or (iii) a termination or suspension of the marketing of such products.

(h) Neither the Company nor any of its Subsidiaries has received any written notice that the FDA or any other Governmental Entity has (i) commenced, or threatened to initiate, any action to withdraw its investigational device exemption, premarket clearance or premarket approval or request the recall of any Medical Device, (ii) commenced, or threatened to initiate, any action to enjoin manufacture or distribution of any Medical Device or (iii) commenced, or threatened to initiate, any action to enjoin the manufacture or distribution of any Medical Device produced at any facility where any Medical Device is manufactured, tested, processed, packaged or held for sale.

Section 4.19 Vote Required. The affirmative vote of the holders of a majority of the outstanding shares of Company Common Stock in favor of the approval and adoption of this Agreement and the Transactions (the Company Stockholder Approval) is (unless the Merger is consummated in accordance with Section 253(a) of the DGCL, as contemplated by Section 2.4 hereof) the only vote of the holders of any of the Company s capital stock necessary in connection with the consummation of the Transactions.

Section 4.20 Company Board Recommendation. The Company Board has unanimously adopted resolutions affecting the Company Board Recommendation. As of the Agreement Date, the Company Board Recommendation has not been amended, rescinded, or modified.

Section 4.21 Disclosure Documents.

(a) Each Company Disclosure Document when filed, distributed or disseminated, as applicable, shall comply as to form in all material respects with the applicable requirements of the Exchange Act and the rules and regulations thereunder and all other applicable Laws.

(b)(i) The Proxy Statement, as supplemented or amended, if applicable, at the time such Proxy Statement or any amendment or supplement thereto is first mailed to Company Stockholders and at the time of the Special Meeting and (ii) any Company Disclosure Document (other than the Proxy Statement), at the time of the filing of such Company Disclosure Document or any supplement or amendment thereto and at the time of any distribution or dissemination thereof, will not contain any untrue statement of a material fact or omit to state any material fact that is necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(c) The information with respect to the Company or any of its Subsidiaries that the Company furnishes to the Parent in writing specifically for use in the Schedule TO and the Offer Documents, at the time of the filing of the Schedule TO, at the time of any distribution or dissemination of the Offer Documents and at the time of the consummation of the Offer, will not contain any untrue statement of a material fact or omit to state any material fact that is required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(d) The representations and warranties contained in this Section 4.21 will not apply to statements or omissions included in the Company Disclosure Documents based upon information furnished to the Company in writing by the Parent or the Purchaser specifically for use therein.

Section 4.22 Interested Party Transactions. Neither the Company nor any of its Subsidiaries is a party to any transaction or agreement (other than ordinary course directors compensation arrangements or any Company

Equity Plans or the ESPP) with any Affiliate, stockholder that beneficially owns 2% or more of the outstanding Company Common Stock, or current or former director or executive officer of the Company. No event has occurred since the date of the Company s last proxy statement to its stockholders that would be required to be reported by the Company pursuant to Item 404 of Regulation S-K promulgated by the SEC.

Section 4.23 Opinion of Financial Advisor. The Company Board has received from each of the Company s financial advisors, J.P. Morgan Securities Inc. and Piper Jaffray & Co., an opinion, dated as of the Agreement Date, to the effect that, as of such date and based upon and subject to the matters and limitations set forth therein, the consideration to be received by the Company Stockholders pursuant to either the Offer or the Merger is fair, from a financial point of view, to such holders. The Company has obtained the authorization of the Company financial advisors to, and shall, include a copy of each financial advisor s opinion and a fair summary of the analysis underlying each opinion in the Schedule 14D-9 and, if applicable, the Proxy Statement or in any information statement relating to the Transactions which the Company must, under any applicable Law, file with any Governmental Entity or distribute to the Company Stockholders and where such filing must include such opinion.

Section 4.24 Directors and Officers. As of the Agreement Date, each member of the Company Board and each executive officer of the Company has advised the Company in writing that his or her intention is to tender all Shares, if any, beneficially owned by him or her pursuant to the Offer.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE PARENT AND THE PURCHASER

Except as disclosed in the disclosure schedule of the Parent and the Purchaser delivered to the Company concurrently herewith (the Parent Disclosure Schedule) (with specific reference to the section of this Agreement to which the information stated in such Parent Disclosure Schedule relates; *provided* that (a) disclosure in any section of such Parent Disclosure Schedule shall be deemed to be disclosed with respect to any other Section of this Agreement to the extent that it is reasonably apparent from the face of such disclosure that such disclosure is applicable or relevant to such other Section and (b) the mere inclusion of an item in such Parent Disclosure Schedule as an exception to a representation or warranty shall not be deemed an admission that such item represents a material exception or material fact, event or circumstance or that such item has had or would have a Parent Material Adverse Effect), the Parent and the Purchaser jointly and severally represent and warrant to the Company as follows:

Section 5.1 Organization. Each of the Parent and the Purchaser is a corporation duly organized and validly existing under the laws of the jurisdiction of its incorporation and has the requisite power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted. Each of the Parent and the Purchaser is duly qualified or licensed to do business and in good standing in each jurisdiction in which the nature of the business conducted by it makes such qualification or licensing necessary, except where the failure to be so duly qualified or licensed and in good standing would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect. For purposes of this Agreement, Parent Material Adverse Effect means any material adverse change in, or material adverse effect on, the ability of the Parent or the Purchaser to consummate the Transactions, including any such change or effect that prevents, materially delays or materially impedes the Parent s or the Purchaser s ability to consummate the Transactions. The Parent has made available or will make available to the Company a copy of the articles of incorporation or certificate of incorporation, as the case may be, and bylaws or other equivalent organizational documents of the Parent and the Purchaser, as currently in effect.

Section 5.2 Authorization; Validity of Agreement; Necessary Action. Each of the Parent and the Purchaser has the requisite corporate power and authority to execute and deliver this Agreement and to consummate the Transactions. The execution, delivery and performance by the Parent and the Purchaser of this Agreement, approval and adoption of this Agreement and the consummation of the Transactions have been duly and validly

authorized by all necessary action of the Parent and the Purchaser (other than the written consent of the sole stockholder of the Purchaser which shall occur promptly following the execution and delivery of this Agreement), and no other corporate action on the part of the Parent or the Purchaser is necessary to authorize the execution and delivery by the Parent and the Purchaser of this Agreement and the consummation by them of the Transactions. This Agreement has been duly executed and delivered by the Parent and the Purchaser and, assuming due and valid authorization, execution and delivery hereof by the Company, is a valid and binding obligation of each of the Parent and the Purchaser, enforceable against each of them in accordance with its terms, except that (a) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws, now or hereafter in effect, affecting creditors rights and remedies generally and (b) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

Section 5.3 Consents and Approvals; No Violations. The execution and delivery of this Agreement by the Parent and the Purchaser do not, and the performance by the Parent and the Purchaser of this Agreement and the consummation by the Parent and the Purchaser of the Transactions will not, (a) violate any provision of the articles of incorporation or certificate of incorporation, as the case may be, or bylaws (or equivalent organizational documents) of the Parent or the Purchaser, (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any Contract to which the Parent or any of its Subsidiaries is a party or by which any of them or any of their properties or assets is bound, (c) violate any Law applicable to the Parent, any of its Subsidiaries or any of their properties or assets or (d) other than in connection with or compliance with (i) the DGCL, (ii) requirements under other state corporation Laws, (iii) the HSR Act and other Antitrust Laws, (iv) Securities Exchange Rules, and (v) the Exchange Act, require on the part of the Parent or the Purchaser any filing or registration with, notification to, or authorization, consent or approval of, any Governmental Entity; except, in the case of clauses (b), (c) and (d), for such violations, breaches or defaults that, or filings, registrations, notifications, authorizations, consents or approvals the failure of which to make or obtain, would not, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect.

Section 5.4 Disclosure Documents.

(a) The Schedule TO and the Offer Documents, when filed, distributed or disseminated, as applicable, will comply as to form in all material respects with the applicable requirements of the Exchange Act and the rules and regulations thereunder and all other applicable Laws.

(b) The Schedule TO and the Offer Documents, at the time of filing, distribution or dissemination and consummation of the Offer, will not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(c) The information with respect to the Parent and any of its Subsidiaries that the Parent furnishes to the Company in writing specifically for use in any Company Disclosure Document shall not (i) in the case of the Proxy Statement, as supplemented or amended, if applicable, at the time such Proxy Statement or any amendment or supplement thereto is first mailed to Company Stockholders, as of the Special Meeting or at the Effective Time and (ii) in the case of any Company Disclosure Document (other than the Proxy Statement), at the time of the filing of such Company Disclosure Document or any supplement or amendment thereto, at the time of any distribution or dissemination thereof and at the consummation of the Offer, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(d) The representations and warranties contained in this Section 5.4 will not apply to statements or omissions included in the Schedule TO or the Offer Documents based upon information furnished to the Parent or the Purchaser in writing by the Company specifically for use therein.

Section 5.5 Operations and Ownership of the Purchaser. The Purchaser was formed solely for the purpose of engaging in the Transactions and has not owned any assets, engaged in any business activities, conducted any operations or incurred any liabilities or obligations other than in connection with the Transactions. The authorized capital stock of the Purchaser consists of 1,000 shares of common stock, par value $0.01 per share, 100 shares of which are validly issued and outstanding. All of the issued and outstanding capital stock of the Purchaser is, and at the Effective Time will be, owned directly by the Parent.

Section 5.6 Financing; Sufficient Funds. The Parent has delivered to the Company a true, complete and correct signed copy of a debt commitment letter, dated as of the Agreement Date (the Debt Financing Letter), by and among Morgan Stanley Senior Funding, Inc., Covidien International Finance S.A., the parent of Parent (CIFSA) and Covidien plc, pursuant to which the lenders party thereto have agreed, subject to the terms and conditions set forth therein, to provide or cause to be provided, the debt amounts set forth therein to CIFSA (the Financing). As of the Agreement Date, (a) the Debt Financing Letter is in full force and effect, is a legal, valid and binding obligation of CIFSA and, to the knowledge of Parent, the other parties thereto, and (b) the funding of the Financing is not subject to any conditions or other contingencies other than those set forth in the Debt Financing Letter. Subject to the terms and satisfaction of the conditions of the Financing and this Agreement, the Financing, together with the cash and marketable securities of CIFSA, will provide the Parent and the Purchaser with sufficient immediately available funds to pay when due for all of the Shares tendered and not properly withdrawn in the Offer and the aggregate Merger Consideration. Prior to the Agreement Date, the Debt Financing Letter has not been amended or modified, and as of the Agreement Date, the commitments contained in the Debt Financing Letter have not been withdrawn or rescinded in any respect. As of the Agreement Date, assuming the accuracy of the representations and warranties in Article IV and compliance by the Company with its covenants set forth in this Agreement, (x) no event has occurred or circumstance exists which, with or without notice, lapse of time or both, would constitute a default or breach of CIFSA under the Debt Financing Letter and (y) subject to the satisfaction of the conditions to the Offer set forth on Annex A hereto, neither Parent nor Purchaser has any reason to believe that CIFSA will be unable to satisfy on a timely basis any condition to funding of the Financing to be satisfied by it as set forth in the Debt Financing Letter at or prior to the Share Acceptance Time. Except for fee letters with respect to fees and related arrangements with respect to the Financing (which do not relate to the conditionality of, or contain any conditions precedent to, the funding of the Financing), there are no side letters or other agreements, contracts or agreements related to the funding or investing, as applicable, of the full amount of the Financing other than as expressly set forth in the Debt Financing Letter and delivered to the Company prior to the date hereof. As of the Agreement Date, CIFSA has fully paid, or caused to paid, any and all commitment fees which are due and payable on or prior to the Agreement Date pursuant to the terms of the Debt Financing Letter.

Section 5.7 Share Ownership. None of the Parent or the Purchaser beneficially owns any Company Common Stock.

Section 5.8 Vote/Approval Required. No vote or consent of the holders of any class or series of capital stock of the Parent is necessary to approve the Offer, the Merger or the other Transactions. The vote or consent of the Parent as the sole stockholder of the Purchaser (which shall occur promptly following the execution and delivery of this Agreement) is the only vote or consent of the holders of any class or series of capital stock of the Purchaser necessary to approve this Agreement, the Offer, the Merger and the other Transactions.

Section 5.9 Investigation by the Parent and the Purchaser. Each of the Parent and the Purchaser has conducted its own independent review and analysis of the businesses, assets, condition, operations and prospects of the Company and its Subsidiaries. In entering into this Agreement, each of the Parent and the Purchaser acknowledges that, except for the representations and warranties of the Company expressly set forth in Article IV, none of the Company or its Subsidiaries nor any of their respective Representatives makes any representation or warranty, either express or implied, to Parent, Purchaser or any of their respective representatives in connection with this Agreement, the Offer, the Merger or the Transactions. Without limiting the generality of the foregoing, none of the Company or its Subsidiaries nor any of their respective

Representatives or any other Person has made a representation or warranty to the Parent or the Purchaser with respect to (i) any projections or forecasts, estimates or budgets for the Company or its Subsidiaries or (ii) any materials, documents or information relating to the Company or its Subsidiaries made available to each of the Parent or the Purchaser or their Representatives in any data room, confidential memorandum, other offering materials or otherwise, except as expressly and specifically covered by a representation or warranty set forth in Article IV. For purposes of this Agreement, Parent s Knowledge or Knowledge of the Parent means such facts and other information that as of the date of determination are actually known to the individuals set forth on Section 5.9 of the Parent Disclosure Schedule,

Section 5.10 Litigation. There is no Proceeding pending against or, to the Knowledge of the Parent, threatened against or affecting, the Parent or any of its Subsidiaries that would, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair the Parent s or the Purchaser s ability to consummate the Transactions. Neither the Parent nor any of its Subsidiaries, is subject to any Order against the Parent or any of its Subsidiaries or naming the Parent or any of its Subsidiaries as a party that would, individually or in the aggregate, reasonably be expected to have a Parent Material Adverse Effect.

Section 5.11 Section 203 of the DGCL. As of the Agreement Date, neither the Parent nor the Purchaser nor any of their respective affiliates or associates is, and at no time during the last three (3) years has been, an interested stockholder of the Company, as such terms are defined in Section 203 of the DGCL.

Section 5.12 Brokers or Finders. No investment banker, broker, finder, financial advisor or intermediary, other than Morgan Stanley & Co. Incorporated, the fees and expenses of which will be paid by the Parent or the Purchaser, is entitled to any investment banking, brokerage, finder s or similar fee or commission in connection with this Agreement or the Transactions based upon arrangements made by or on behalf of the Parent or any of its Subsidiaries.

Section 5.13 Other Agreements. To the actual knowledge of the executive officers of the Parent, the Parent has disclosed to the Company all written contracts, agreements or understandings between or among the Parent, the Purchaser or any Affiliate of the Parent, on the one hand, and any member of the Company Board or officers or employees of the Company or its Subsidiaries, on the other hand, other than as contemplated by this Agreement.

ARTICLE VI

COVENANTS

Section 6.1 Interim Operations of the Company.

(a) During the period from the Agreement Date to the Share Acceptance Time or the date, if any, on which this Agreement is earlier terminated pursuant to Section 8.1 (except (i) as may be required by Law, (ii) with the prior written consent of the Parent, (iii) as contemplated or permitted by this Agreement or (iv) as set forth in the Company Disclosure Schedule), the business of the Company and its Subsidiaries shall be conducted only in the ordinary and usual course of business in all material respects consistent with past practice, and, to the extent consistent therewith, the Company and its Subsidiaries shall use reasonable best efforts to (1) preserve intact their current business organization, (2) maintain their relationships with customers, suppliers and others having business dealings with them, (3) notify and consult with Parent promptly (A) after receipt of any material communication from any Governmental Entity or inspections of any manufacturing or clinical trial site and before giving any material submission to a Governmental Entity and (B) prior to making any material change to a study protocol, adding new trials, making any material change to a manufacturing plan or process, or making a material change to the development timeline for any of its product candidates or programs, (4) preserve intact and keep available the services of present employees of the Company and its Subsidiaries, (5) keep in effect casualty, product liability, workers

compensation and other insurance policies in coverage amounts substantially similar to those in effect at the date of this Agreement, and (6) preserve and protect the Intellectual Property owned by the Company and its Subsidiaries; *provided, however*, that no action by the Company or any of its Subsidiaries with respect to matters addressed specifically by any provision of this Section 6.1(a) shall be deemed a breach of this sentence unless such action would constitute a breach of such specific provision. Without limiting the generality of the foregoing, except (A) as may be required by Law, (B) with the prior written consent of the Parent, which consent shall not be unreasonably withheld, delayed or conditioned or (C) as set forth in the Company Disclosure Schedule, prior to the time when, pursuant to Section 1.3(a), the Parent s designees for director constitute the majority of the Company Board, the Company shall not, and shall not permit any of its Subsidiaries to, do any of the following:

(i) amend its certificate of incorporation or bylaws (or equivalent organizational documents);

(ii) issue, deliver, sell, dispose of, pledge or otherwise encumber, or authorize or propose the issuance, sale, disposition or pledge or other encumbrance of (x) any shares of capital stock of any class or any other ownership interest of the Company or any of its Subsidiaries, or any securities or rights convertible into, exchangeable for, or evidencing the right to subscribe for any shares of capital stock or any other ownership interest of the Company or any of its Subsidiaries, or any rights, warrants, options, calls, commitments or any other agreements of any character to purchase or acquire any shares of capital stock or any other ownership interest of the Company or any of its Subsidiaries or any securities or rights convertible into, exchangeable for, or evidencing the right to subscribe for, any shares of capital stock or any other ownership interest of the Company or any of its Subsidiaries, or (y) any other securities of the Company or any of its Subsidiaries in respect of, in lieu of, or in substitution for, Company Common Stock outstanding on the Agreement Date, except for (1) Company Common Stock to be issued or delivered (A) pursuant to the Company Equity Plans, (B) in connection with acquisitions consistent with past practice or (C) pursuant to the Chestnut Merger Agreement, (2) the issuance, grant or delivery of up to an aggregate amount of 750,000 Company Stock Options, Company Restricted Stock and Company RSUs to certain of its employees, directors and consultants or (3) the exercise of the Top-Up Option;

(iii) redeem, purchase or otherwise acquire, or propose to redeem, purchase or otherwise acquire, any outstanding Company Common Stock, other than (x) from holders of Company Stock Options in full or partial payment of the exercise price, or (y) in connection with the withholding of Taxes payable by any holder of Company Stock Options, Company Restricted Stock or Company RSUs upon the exercise, settlement or vesting thereof, in each case to the extent required or permitted under the terms of such Company Stock Options, Company Restricted Stock or Company RSUs or any applicable Company Equity Plan;

(iv) split, combine, subdivide or reclassify any Company Common Stock or declare, set aside for payment or pay any dividend or other distribution in respect of any Company Common Stock or otherwise make any payments to stockholders in their capacity as such; *provided* that this Section 6.1(a)(iv) shall not apply to dividends or distributions declared, set aside for payment or paid by wholly owned Subsidiaries of the Company to the Company or any other wholly owned Subsidiary of the Company;

(v) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of the Company or any of its Subsidiaries, other than the Transactions;

(vi) acquire, sell, lease, dispose of, pledge or encumber any assets, other than (x) acquisitions in existing or related lines of business of the Company or any of its Subsidiaries as to which the aggregate consideration for all such acquisitions does not exceed $2,000,000, (y) sales, leases, dispositions, pledges or encumbrances of assets with an aggregate fair market value of less than $2,000,000, or (z) sales or transfers of inventory in the ordinary course of business;

(vii)(x) other than in the ordinary course of business consistent with past practice, incur any indebtedness for borrowed money in addition to that incurred as of the Agreement Date or guarantee any such indebtedness or make any loans, advances or capital contributions to, or investments in, any other Person, other than (A) to the Company or any wholly owned Subsidiary of the Company or (B) strategic investments as to which the aggregate consideration for all such investments does not exceed $2,000,000, or (y) pay, discharge or satisfy any material claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction of (1) in the ordinary course of business and consistent with past practice, liabilities reflected or reserved against in the Company s consolidated balance sheet as of the Balance Sheet Date, (2) liabilities incurred in the ordinary course of business since the Balance Sheet Date, or (3) all amounts under the Loan Agreement, in accordance with Section 6.8(b)(iii);

(viii) change the compensation payable to any officer, director, employee, agent or consultant, or enter into any employment, severance, retention or other agreement or arrangement with any officer, director, employee, agent or consultant of the Company or any of its Subsidiaries, or adopt, or increase the benefits (including fringe benefits) under, any employee benefit plan or otherwise, except (A), in each case, as required by Law or in accordance with existing agreements provided to Parent and disclosed in the Company Disclosure Schedule and (B), in the case of compensation for employees, agents or consultants who are not officers or directors, in the ordinary course of business consistent with past practice unless the total compensation payable to such employee, agent or consultant (including base, bonus opportunity at target, equity, sign-on bonus and relocation) equals or exceeds two hundred thousand dollars ($200,000) US; or make any loans to any of its directors, officers or employees, agents or consultants, or make any change in its existing borrowing or lending arrangements for or on behalf of any such persons pursuant to an employee benefit plan or otherwise;

(ix) except as may be contemplated by this Agreement, in the ordinary course of business consistent with past practices or to the extent required or advisable to comply with applicable Law, terminate or materially amend any Benefit Plans;

(x) change in any material respect any of the accounting methods used by the Company unless required by GAAP or applicable Law;

(xi) enter into a Material Contract or amend, terminate or waive, release or assign any material rights or claims with respect to any Material Contract in any material respect;

(xii) settle (x) any suit, action, claim, proceeding or investigation that is disclosed in the Company SEC Reports filed prior to the Agreement Date or (y) any other suit, action, claim, proceeding or investigation;

(xiii) make, revise, or amend any material Tax election or settle or compromise any material federal, state, local, or foreign Tax liability, change any material Tax accounting period, change any material method of Tax accounting, enter into any closing agreement relating to any material Tax, file any amended Tax Return, file any Tax Return in a manner inconsistent with past practice, surrender any right to claim a material Tax refund, or consent to any waiver or extension of the statute of limitations applicable to any material Tax claim or assessment; or

(xiv) enter into any contract, agreement, commitment or arrangement to do any of the foregoing.

(b) The Company shall promptly advise the Parent orally and in writing of any change or event that has had or would reasonably be expected to have a Company Material Adverse Effect.

Section 6.2 Access to Information. From the Agreement Date until the earlier of the Share Acceptance Time and the termination of this Agreement, the Company shall (and shall cause each of its Subsidiaries to) afford to officers, employees, counsel, investment bankers, accountants and other authorized representatives (Representatives) of the Parent and the Purchaser reasonable access, in a manner not materially disruptive to the operations of the business of the Company and its Subsidiaries, during normal business hours and upon

reasonable notice, to the properties, books and records of the Company and its Subsidiaries and, during such period, shall, and shall cause each of its Subsidiaries to, furnish promptly to such Representatives all information concerning the business, properties and personnel of the Company and its Subsidiaries in each case as may reasonably be requested and necessary to consummate the Transactions (and not to conduct further due diligence or other investigation of the Company); *provided, however*, that nothing herein shall require the Company or any of its Subsidiaries to disclose any information to the Parent or the Purchaser if such disclosure would, in the reasonable judgment of the Company, (a) violate applicable Law or the provisions of any agreement to which the Company or any of its Subsidiaries is a party (provided that the Company shall use its reasonable best efforts to obtain waivers of any such restrictions) or (b) waive attorney-client privilege. Promptly after the Agreement Date, the Company shall provide to the Parent a copy of each Company financial advisor s fairness opinion, a summary of the analysis underlying each fairness opinion and a copy of the relevant portions of each Company financial advisor s presentation to the Company Board related thereto. That certain letter agreement, dated April 28, 2010, by and between the Company and the Parent (the Confidentiality Agreement) shall apply with respect to information furnished hereunder by the Company, its Subsidiaries and the Company s Representatives (as defined in the Confidentiality Agreement).

Section 6.3 Board Recommendation; Acquisition Proposals.

(a) Subject to Section 6.3(b), 6.3(e) and 6.3(f), the Company and its Subsidiaries will not, and will use best efforts to cause their respective Representatives not to, directly or indirectly, from the Agreement Date until the Share Acceptance Time or, if earlier, the termination of this Agreement in accordance with Article VIII (i) initiate, solicit, or knowingly encourage or facilitate, or participate or engage in any negotiations, inquiries or discussions with respect to any Acquisition Proposal, (ii) in connection with any actual or potential Acquisition Proposal, disclose or furnish any nonpublic information or data to any Person concerning the Company s business or properties or afford any Person other than the Parent or its Representatives access to its properties, books, or records, except as required by a governmental demand for information, (iii) enter into or execute, or propose to enter into or execute, any agreement relating to an Acquisition Proposal, or (iv) approve, endorse, recommend or make or authorize any statement, recommendation, or solicitation in support of any Acquisition Proposal or any offer or proposal relating to an Acquisition Proposal other than with respect to the Offer, the Merger or the Transactions (other than any confidential statement, recommendation or solicitation by and among the Company, the Company Board and their Representatives); *provided, however*, that notwithstanding anything to the contrary herein, the Company may refer any third party to this Section 6.3. The Company will, and will direct its Representatives to, cease immediately and cause to be terminated all discussions and negotiations that commenced prior to the Agreement Date regarding any proposal that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal.

(b) Notwithstanding anything to the contrary contained in this Agreement, if at any time following the Agreement Date and prior to the Share Acceptance Time the Company is contacted by any third party expressing an interest in discussing an Acquisition Proposal or receives an Acquisition Proposal, in each case, if the Company has not materially breached any provision of Section 6.3(a), the Company and the Company Board may participate or engage in negotiations, inquiries or discussions (including, as a part thereof, making any counterproposal) with, or disclose or furnish any nonpublic information and data to, any Person or Persons (but only after any such Person enters into a confidentiality agreement, on substantially the same terms contained in, and no less restrictive than, the Confidentiality Agreement, with the Company which may not provide for an exclusive right to negotiate with the Company and may not restrict the Company from complying with this Section 6.3(b)) making such contact or making such Acquisition Proposal and their respective Representatives and potential sources of financing, if, and only if, prior to the Share Acceptance Time the Company Board determines in good faith, after consultation with its financial advisors and outside legal counsel, that such Person or Persons have submitted to the Company an Acquisition Proposal that is, or would reasonably be expected to lead to, a Superior Proposal and the Company Board determines in good faith, after consultation with counsel, that the failure to participate in such negotiations, inquiries or discussions, disclose or furnish such information, enter into any agreement

related to any Acquisition Proposal or accept any offer or proposal relating to an Acquisition Proposal would reasonably be expected to violate the fiduciary duties of the Company s directors under applicable Law.

(c) The Company will as promptly as reasonably practicable (and in any event within twenty-four (24) hours after receipt) notify the Parent in writing of the receipt by the Company of (i) any Acquisition Proposal or (ii) any request for non-public information relating to the Company or any of its Subsidiaries other than requests for information in the ordinary course of business and, in the good faith judgment of the Company Board, unrelated to an Acquisition Proposal. The Company shall notify the Parent, in writing, of any decision of the Company Board as to whether to consider any Acquisition Proposal or to enter into discussions or negotiations concerning any Acquisition Proposal or to disclose or furnish nonpublic information with respect to the Company or any of its Subsidiaries to any Person, which notice shall be given as promptly as practicable after such determination was reached (and in any event no later than twenty-four (24) hours after such determination was reached). The Company will (i) provide the Parent with written notice setting forth all such information (including the identity of the Person making such Acquisition Proposal) as is necessary to keep the Parent informed of the status and material terms of any such Acquisition Proposal and of any material amendments thereto, (ii) promptly provide the Parent a copy of all written information provided by or on behalf of such Person or group in connection with any Acquisition Proposal or provided by or on behalf of the Company or its Representatives to such Person or group (other than any information which has previously been made available to Parent or its Representatives), and (iii) promptly (and in any event within twenty-four (24) hours of such determination) notify the Parent of any determination by the Company Board that such Acquisition Proposal constitutes a Superior Proposal. The Company shall not, and shall cause its Subsidiaries not to, enter into any agreement with any Person subsequent to the Agreement Date that would restrict the Company s ability to provide to Parent the information set forth in clauses (i) and (ii) above, and, if the Company is a party to any agreement that would prohibit the Company from providing such information to Parent, prior to providing non-public information to, or engaging in discussions or negotiations with, the counterparty to such agreement, the Company will obtain approval from the counterparty to such agreement to allow the Company to provide such information to Parent.

(d) Subject to Sections 6.3(e) and 6.3(f), unless and until this Agreement has been terminated in accordance with Section 8.1, neither the Company Board nor any committee thereof shall, directly or indirectly, (i)(w) withdraw, qualify, or modify, or propose to withdraw, qualify or modify (other than in any confidential communication by and among the Company, the Company Board and their Representatives), in a manner adverse to Parent or Purchaser, the Company Board Recommendation, (x) make any public disclosure inconsistent with the Company Board Recommendation, or, fail to reaffirm the Company Board Recommendation following the public announcement of an Acquisition Proposal within two (2) Business Days of a written request by Parent; (y) approve, adopt, or recommend, or propose to approve, adopt, or recommend (other than in any confidential communication by and among the Company, the Company Board and their Representatives), any Acquisition Proposal or (z) in the event of a tender offer or exchange offer for any outstanding Shares, fail to recommend against acceptance of such tender offer or exchange offer by the Company Stockholders within ten (10) Business Days of the commencement thereof (any action described in clauses (w)-(z) being referred to as a Change of Recommendation) or (ii) approve or recommend, or publicly propose to approve or recommend, or allow the Company to execute or enter into, any letter of intent, memorandum of understanding, agreement in principle, merger agreement, acquisition agreement, option agreement, joint venture agreement, partnership agreement, or other similar agreement, arrangement, or understanding (x) constituting or related to, or that is intended to or would reasonably be expected to lead to, any Acquisition Proposal or (y) requiring it to abandon, terminate, or fail to consummate the Transactions.

(e) Notwithstanding the foregoing, prior to the Share Acceptance Time, the Company Board may, if the Company Board determines in good faith, after consultation with its outside legal counsel and financial advisor (in the case of clause (i) below) that (i) (x) a written Acquisition Proposal received by the Company

constitutes a Superior Proposal and (y) the failure to take such action would reasonably be expected to violate the fiduciary duties of the Company s directors under applicable Law, or (ii) in the absence of an Acquisition Proposal, due to events occurring after the Agreement Date, the failure to take such action would reasonably be expected to violate the fiduciary duties of the Company s directors under applicable Law, (1) make a Change of Recommendation, or (2) in the case of clause (i) above, terminate this Agreement to enter into a definitive agreement with respect to such Superior Proposal; *provided*, that the Company shall not terminate this Agreement pursuant to the foregoing clause (2) and any purported termination pursuant to the foregoing clause (2) shall be void and of no force or effect unless, in advance of or concurrently with such termination, the Company (A) pays the Termination Fee as required by Section 8.2, (B) simultaneously with such termination enters into a merger agreement, agreement in principle, acquisition agreement, purchase agreement or other similar agreement relating to an Acquisition Proposal (the Alternative Acquisition Agreement) and (C) terminates this Agreement pursuant to Section 8.1(c)(ii); *provided, further*, that the Company Board may not effect a Change of Recommendation pursuant to the foregoing clause (1), or terminate this Agreement pursuant to the foregoing clause (2) unless (A) the Company shall have provided prior written notice to the Parent at least three (3) Business Days in advance (the Notice Period) of its intention to take such action with respect to such Superior Proposal or otherwise make a Change of Recommendation, which notice shall specify the material terms and conditions of any such Superior Proposal (including the identity of the party marking such Superior Proposal) or the reasons for such Change of Recommendation in the absence of a Superior Proposal, as the case may be, (B) prior to effecting such Change of Recommendation or terminating this Agreement to enter into an Alternative Acquisition Agreement with respect to such Superior Proposal, the Company shall, and shall direct its financial and legal advisors to, during the Notice Period, negotiate with the Parent in good faith (to the extent the Parent desires to negotiate) to make such adjustments in the terms and conditions of this Agreement and (C) following the Notice Period (and giving effect to any proposed adjustments to the terms of this Agreement) the Company Board determines in good faith, after consultation with its outside legal counsel and financial advisor (in the case of clause (i) below) that (i) such Acquisition Proposal remains a Superior Proposal or (ii) the failure to make such Change of Recommendation would still violate the fiduciary duties of the Company s directors under applicable Law. In the event of any material revisions to the Superior Proposal or material changes to the facts and circumstances necessitating such Change of Recommendation after the start of the Notice Period, the Company shall be required to deliver a new written notice to Parent and to comply with the requirements of this Section 6.3(e) with respect to such new written notice, and the Notice Period shall be deemed to have re-commenced on the date of such new notice. Any Change of Recommendation shall not change the approval of the Company Board for purposes of causing any state takeover statute or other state Law to be inapplicable to the Transactions, including each of the Offer and the Merger or the transactions contemplated by the Tender and Voting Agreement.

(f) Nothing contained in this Section 6.3 or elsewhere in this Agreement shall prohibit the Company or the Company Board from taking and disclosing to the Company Stockholders a position contemplated by Rule 14e-2(a) or Rule 14d-9 under the Exchange Act, or from issuing a stop, look and listen statement pending disclosure of its position thereunder.

(g) For purposes of this Agreement:

(i) Acquisition Proposal means any offer, proposal or effort made by any Person or Persons other than the Parent, the Purchaser or any Affiliate thereof to acquire, other than as contemplated by this Agreement, (x) beneficial ownership (as defined under Section 13(d) of the Exchange Act) of 20% or more of the Shares pursuant to a merger, consolidation or other business combination, sale of shares of capital stock, tender offer or exchange offer or similar transaction or series of related transactions involving the Company or (y) 20% or more of the assets of the Company and its Subsidiaries, taken as a whole.

(ii) Superior Proposal means any Acquisition Proposal (substituting the term 50% for the term 20% in each instance where such term appears therein) that the Company Board determines, after consultation with its outside legal counsel and financial advisors, and after taking into account all of

the terms and conditions of such Acquisition Proposal (including any termination or break-up fees and conditions to consummation) and all financial, legal, regulatory, and other aspects of such Acquisition Proposal, to be more favorable to the Company and the Company Stockholders than the Transactions.

Section 6.4 Employee Benefits.

(a) From the Effective Time until the first anniversary of the Effective Time, Parent shall or shall cause the Surviving Corporation to either (i) continue certain Benefit Plans, (ii) permit employees of the Company and any of its Subsidiaries who remain in the employment with Parent or Surviving Corporation or their respective subsidiaries following the Effective Time (Continuing Employees) while they remain so employed by Parent or Surviving Corporation or their respective subsidiaries, and as applicable, their eligible dependents, to participate in the employee benefit plans, programs or policies (including without limitation any plan intended to qualify within the meaning of Section 401(a) of the Code and any severance, vacation, sick, personal time off plans or programs and excluding any equity compensation or bonus plans, programs, agreements or arrangements) of Parent or its Affiliates, or (iii) a combination of clauses (i) and (ii), in all cases, such employee benefit plans, programs or policies shall be substantially comparable in the aggregate to those provided to such employees immediately preceding the Effective Time.

(b) From the Effective Time until the first anniversary of the Effective Time, Parent shall or shall cause the Surviving Corporation to provide Continuing Employees while they remain so employed by Parent or Surviving Corporation or their respective subsidiaries with base salary that is not materially less than the base salary in effect for each such Continuing Employee immediately preceding the Effective Time. From the Effective Time, Parent shall or shall cause the Surviving Corporation to provide Continuing Employees with equity compensation and target bonus opportunity that is equal to that provided for similarly situated employees of Parent and its subsidiaries.

(c) To the extent Parent elects to have Employees and their eligible dependents participate in its or its Affiliate s employee benefit plans, program or policies following the Effective Time and subject to applicable Law and the terms of the applicable Benefit Plan, Parent shall, or shall cause the Surviving Corporation or its subsidiaries to, recognize the prior service with the Company or any of its Subsidiaries, including prior service with predecessor employers where such prior service is recognized by the Company and any of its Subsidiaries as of immediately prior to the Effective Time, of each Employee in connection with all employee benefit plans, programs or policies of Parent or its Affiliates in which Employees are eligible to participate for purposes of eligibility to participate, vesting and determination of level of benefits (but not (A) for purposes of vesting in stock options and other equity awards, (B) for the purposes of benefit accruals under any defined benefit pension plan or (C) to the extent that such recognition would result in duplication of benefits).

(d) From and after the Effective Time, Parent shall, or shall cause the Surviving Corporation or its subsidiaries to, cause any pre-existing conditions or limitations and eligibility waiting periods under any group health plans of Parent or its Affiliates to be waived with respect to Continuing Employees and their eligible dependents to the extent such Continuing Employees and their eligible dependents were not subject to such preexisting conditions and limitations and eligibility waiting periods under the comparable Plans as of the time immediately preceding the Effective Time.

(e) No provision of this Agreement shall create any third party beneficiary rights in any employee, any beneficiary or dependents thereof, or any collective bargaining representative thereof, with respect to the compensation, terms and conditions of employment and benefits that may be provided to any employee by Company, Parent or the Surviving Corporation or under any benefit plan which Company, Parent or Surviving Corporation may maintain.

Section 6.5 Publicity. The initial press release by each of the Parent and the Company with respect to the execution of this Agreement shall be acceptable to the Parent and the Company. Neither the Company nor the Parent (nor any of their respective Affiliates) shall issue any other press release or make any other public

announcement with respect to this Agreement or the Transactions without the prior agreement of the other party, except as may be required by Law or by any Securities Exchange Rule, in which case the party proposing to issue such press release or make such public announcement shall use reasonable best efforts to consult in good faith with the other party before making any such public announcements; *provided* that the Company will no longer be required to obtain the prior agreement of or consult with the Parent in connection with any such press release or public announcement if the Company Board has withdrawn its Recommendation or in connection with any such press release or public announcement pursuant to Section 6.3(f), *provided*, that the Company, in all such events, shall provide Parent with a copy of any such press release or public announcement a reasonable time in advance of public dissemination.

Section 6.6 Directors and Officers Insurance and Indemnification.

(a) From and after the Effective Time, the Parent shall, and shall cause the Surviving Corporation to, indemnify and hold harmless the individuals who at any time prior to the Effective Time (i) were directors or officers of the Company or any of its present or former Subsidiaries or corporate parents or (ii) served as treasurer of the Company (collectively, the Indemnified Parties) against any costs or expenses (including reasonable attorneys fees), judgments, fines, losses, claims, damages or liabilities in connection with actions or omissions occurring at or prior to the Effective Time (including the Transactions) to the fullest extent that the Surviving Corporation is permitted by Law, and the Parent shall, and shall cause the Surviving Corporation to, promptly advance expenses as incurred to the fullest extent that the Surviving Corporation is permitted by Law. The certificate of incorporation and bylaws of the Surviving Corporation shall contain the provisions with respect to indemnification and advancement of expenses set forth in the certificate of incorporation and bylaws of the Company as amended, restated and in effect on the Agreement Date, which provisions shall not be amended, repealed or otherwise modified in any manner that would adversely affect the rights thereunder of the Indemnified Parties, unless such modification is required by Law.

(b) Without limiting any of the obligations under paragraph (a) of this Section 6.6, from and after the Effective Time, the Surviving Corporation shall keep in full force and effect, and comply with the terms and conditions of, any agreement in effect as of the Agreement Date between or among the Company or any of its Subsidiaries and any Indemnified Party providing for the indemnification of such Indemnified Party.

(c) The Parent shall cause to be maintained in effect for not less than six (6) years from the Effective Time the current policies of directors and officers liability insurance and fiduciary liability insurance maintained by the Company and the Company s Subsidiaries for the Indemnified Parties and any other employees, agents or other individuals otherwise covered by such insurance policies prior to the Effective Time (collectively, the Insured Parties) with respect to matters occurring at or prior to the Effective Time (including the Transactions), so long as the annual premium therefore would not be in excess of two hundred percent (200%) of the last annual premium paid prior to the Effective Time (the Maximum Premium). Notwithstanding anything to the contrary in this Agreement, the Company may, prior to the Effective Time, purchase a so-called Reporting Tail Endorsement with an annual premium not in excess of the Maximum Premium, in which case, provided that the Parent causes the Surviving Corporation to maintain such Reporting Tail Endorsement in full force and effect for not less than six (6) years from the Effective Time, the Parent shall be relieved from its other obligations under this Section 6.6.

(d) This Section 6.6 is intended to benefit the Insured Parties and the Indemnified Parties, and shall be binding on all successors and assigns of the Parent, the Purchaser, the Company and the Surviving Corporation. The Parent hereby guarantees the payment and performance by the Surviving Corporation of the indemnification and other obligations pursuant to this Section 6.6 and the certificate of incorporation and bylaws of the Surviving Corporation.

(e) After the Effective Time, the Parent guarantees the full performance of the Surviving Corporation of its covenants and obligations set forth in this Section 6.6.

Section 6.7 Takeover Statutes. The Company has used and shall use its reasonable best efforts (a) to take all action necessary so that no control share acquisition , fair price , business combination or other anti-takeover Law is or becomes applicable to the Offer, the Merger, any of the other Transactions or the transactions contemplated by the Tender and Voting Agreement and (b) if any such anti-takeover Laws are or become applicable to the Offer, the Merger, any of the other Transactions or the transactions contemplated by the Tender and Voting Agreement, to take all action necessary so that the Offer, the Merger, any of the other Transactions and the transactions contemplated by the Tender and Voting Agreement may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise to minimize the effect of such anti-takeover Laws on the Offer, the Merger, any of the other Transactions or the transactions contemplated by the Tender and Voting Agreement. Nothing in this Agreement shall be deemed to prohibit the Company from complying with its obligations under Section 220 of the DGCL.

Section 6.8 Reasonable Best Efforts.

(a) Notwithstanding anything in this Agreement to the contrary, the parties hereto agree to make an appropriate filing of a Notification and Report Form pursuant to the HSR Act and to make all other filings required by applicable foreign Antitrust Laws with respect to the Transactions as promptly as practicable and in any event prior to the expiration of any applicable legal deadline (provided that the filing of a Notification and Report Form pursuant to the HSR Act will be made within ten (10) Business Days after the Agreement Date) and to supply as promptly as practicable any additional information and documentary material that may be required pursuant to the HSR Act or any other Antitrust Law. The parties shall also consult and cooperate with one another, and consider in good faith the views of one another, in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto in connection with proceedings under or relating to any such Antitrust Laws. Without limiting the foregoing, the parties hereto agree (i) to give each other reasonable advance notice of all meetings with any Governmental Entity relating to any Antitrust Laws, (ii) to the extent practicable, to give each other reasonable advance notice of all substantive oral communications with any Governmental Entity relating to any Antitrust Laws, (iii) if any Governmental Entity initiates a substantive oral communication regarding any Antitrust Laws, to promptly notify the other party of such communication, and (iv) to provide each other with copies of all written communications from any Governmental Entity relating to any Antitrust Laws. Any such disclosures or provision of copies by one party to the other may be made on an outside counsel basis if appropriate. Notwithstanding anything in this Agreement to the contrary, the Parent agrees, and shall cause each of its Subsidiaries and Affiliates, to use reasonable best efforts to take any and all actions necessary to obtain any consents, clearances or approvals required under or in connection with the HSR Act, the Sherman Act, as amended, the Clayton Act, as amended, the Federal Trade Commission Act, as amended, and any other federal, state or foreign law, regulation or decree designed to prohibit, restrict or regulate actions for the purpose or effect of monopolization or restraint of trade or the significant impediment of effective competition (collectively Antitrust Laws), and to enable all waiting periods under applicable Antitrust Laws to expire, and to use reasonable best efforts to avoid or eliminate each and every impediment under applicable Antitrust Laws asserted by any Governmental Entity, in each case, to cause the Merger and the other Transactions to occur prior to the End Date, including but not limited to (x) promptly complying with or modifying any requests for additional information (including any second request) by any Governmental Entity, and (y) contesting, defending and appealing any threatened or pending preliminary or permanent injunction or other order, decree or ruling or statute, rule, regulation or executive order that would adversely affect the ability of any party hereto to consummate the Transactions and taking any and all other actions to prevent the entry, enactment or promulgation thereof. Notwithstanding anything to the contrary in this Section 6.8(a), in no event shall Parent or the Purchaser be required to offer, negotiate, commit to or effect, by consent decree, hold separate order or otherwise, the sale, divestiture, license or other disposition of any of the capital stock, assets, rights, products or businesses of the Parent and its Subsidiaries. Each party shall bear its own expenses and costs incurred in connection with any HSR Act filings or other such competition filings and submissions which may be required by such party for the consummation of the Merger and the other Transactions pursuant to this Agreement.

(b) Subject to the terms hereof, and except with regard to the Antitrust Laws which shall be governed by Section 6.8(a), the Company, the Parent and the Purchaser shall, and the Parent and the Company shall cause their respective Subsidiaries and Affiliates to, each use their reasonable best efforts to:

(i) take, or cause to be taken, all actions, and do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to consummate and make effective the Transactions as promptly as reasonably practicable;

(ii) obtain from any Governmental Entity or any other third party any consents, licenses, permits, waivers, approvals, authorizations, or orders and send any notices, in each case, which are required to be obtained, made or sent by the Company or the Parent or any of their Subsidiaries in connection with the authorization, execution and delivery of this Agreement and the consummation of the Transactions; *provided* that in connection therewith none of the Company or its Subsidiaries will be required to (nor, without the prior written consent of the Parent, will) make or agree to make any payment or accept any material conditions or obligations, including amendments to existing conditions and obligations;

(iii) obtain a consent or waiver from Silicon Valley Bank (the Bank) pursuant to Section 9.7 of that certain Loan and Security Agreement, dated June 28, 2006, by and among the Bank and certain of the Company s Subsidiaries, as amended (the Loan Agreement) that sets forth that the Purchaser s acceptance for payment and payment for all Shares validly tendered and not properly withdrawn pursuant to the Offer shall not be considered an Event of Default under Section 8.2(a) of the Loan Agreement; *provided*, *however* that if such consent or waiver cannot be obtained by the Company within five (5) Business Days after the Agreement Date, then the Company shall provide notice to the Bank pursuant to Section 2.1.10 of the Loan Agreement of the Company s intent to prepay all amounts owed under the Loan Agreement on the Initial Expiration Date, and the Company shall pay all such amounts on the Initial Expiration Date;

(iv) as promptly as practicable, make all necessary filings and notifications, and thereafter make any other submissions and applications with respect to this Agreement and the Transactions required under any applicable statute, law, rule or regulation; and

(v) execute or deliver any additional instruments necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement.

The Company and the Parent shall cooperate with each other in connection with the making of all such filings, submissions, applications and requests. The Company and the Parent shall each use their reasonable best efforts to furnish to each other (on an outside counsel basis if appropriate) all information required for any filing, submission, application or request to be made pursuant to the rules and regulations of any applicable statute, law, rule or regulation in connection with the Transactions. For the avoidance of doubt, the Parent and the Company agree that nothing contained in this Section 6.8(b) shall modify, limit or otherwise affect their respective rights and responsibilities under Section 6.8(a).

Section 6.9 Financing.

(a) The Company will, and will cause each of its Subsidiaries to, use its reasonable best efforts to cause its and their respective Representatives to, at Parent s sole cost and expense, cooperate with the Parent and take such actions as the Parent may reasonably request in connection with the procurement and consummation of the Financing (or any Alternative Financing); provided that nothing contained in this Section 6.9 shall require such cooperation to the extent it would unreasonably interfere with the ongoing operations of the Company and its Subsidiaries.

(b) Parent shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable, to (i) maintain in effect the Debt Financing Letter and to satisfy the conditions for obtaining the Financing, (ii) enter into definitive financing agreements with respect to the Financing so that such agreements are in effect no later than the Share

Acceptance Time and (iii) consummate the Financing on or prior to the Share Acceptance Time. Without limiting the generality of the foregoing, in the event that Parent has been notified by the lenders party to the Debt Financing Letter that any portion of the Financing will not be available on the terms and conditions contemplated by the Debt Financing Letter, the Parent shall promptly notify the Company in writing and use its reasonable best efforts to obtain alternative debt financing (Alternative Financing) in an amount at least sufficient to, in addition to the cash and marketable securities of CIFSA and the portion of the Financing that remains available on the terms and conditions contemplated by the Debt Financing Letter, pay when due for all of the Shares tendered and not properly withdrawn in the Offer and the aggregate Merger Consideration. Parent shall not agree to any amendments or modifications to, or waivers of, any condition or other material provision under the Debt Financing Letter without the prior consent of the Company if such amendment, modification or waiver would impose new or additional conditions to the receipt of the Financing or otherwise amend, modify or waive any of the conditions to the receipt of the Financing in a manner would reasonably be expected to cause any delay in the satisfaction of the conditions set forth in Annex I or Article VII. Notwithstanding the foregoing, neither the Parent nor the Purchaser shall be required to (i) waive any conditions and requirements set forth in Annex I or Article VII, (ii) consent to any changes to the Financing as set forth in the Debt Commitment Letter or (iii) accept Alternative Financing on terms less favorable to the Parent and the Purchaser in the aggregate than the Financing would have been. In the event the Parent obtains Alternative Financing, the provisions of this Section 6.9 shall apply to such Alternative Financing to the same extent it applies to the Financing. The Parent shall keep the Company informed on a reasonably current basis in reasonable detail of the status of its reasonable best efforts to finalize the Financing or arrange any Alternative Financing in accordance with this Section 6.9.

Section 6.10 Section 16 Matters. Prior to the Share Acceptance Time, the Company Board, or an appropriate committee of non-employee directors, shall adopt a resolution consistent with the interpretive guidance of the SEC so that the disposition of equity securities of the Company pursuant to this Agreement by any officer or director of the Company who is a covered person for purposes of Section 16 of the Exchange Act shall be an exempt transaction for purposes of Section 16 of the Exchange Act.

Section 6.11 Tax Matters. Except as otherwise provided herein, all real and personal property, transfer, documentary, sales, use registration, value added, stamp duty and other similar Taxes incurred in connection with the Transactions shall be borne by the Parent. For the avoidance of doubt, transfer Taxes shall not include any Taxes measured in whole or in part by net income.

Section 6.12 Obligations of the Purchaser. The Parent shall cause the Purchaser to perform its obligations under this Agreement and to consummate the Offer and the Merger on the terms and conditions set forth in this Agreement. The Parent hereby guarantees the payment by the Purchaser of any amounts payable by the Purchaser pursuant to the Offer or otherwise pursuant to this Agreement.

Section 6.13 Further Assurances. At and after the Effective Time, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of the Company or the Purchaser, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of the Company or the Purchaser, any other actions and things to vest, perfect or confirm of record or otherwise in the Surviving Corporation any and all right, title and interest in, to and under any of the rights, properties or assets of the Company acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger.

Section 6.14 Delisting. The Company agrees to cause to be taken all actions necessary to (a) delist the Company Common Stock from the Nasdaq Stock Market LLC and (b) to terminate the registration of the Company Common Stock under the Exchange Act; *provided* that such delisting or termination shall not be effective until after the Effective Time. The Parent will use all reasonable best efforts to cause the Surviving Corporation to file with the SEC (a) a Form 25 on the Closing Date and (b) a Form 15 on the first Business Day that is at least ten (10) days after the date the Form 25 is filed (such period between the Form 25 filing date and

the Form 15 filing date, the Delisting Period). If the Surviving Corporation is reasonably likely to be required to file any reports pursuant to the Exchange Act during the Delisting Period, the Company will deliver to the Parent at least five (5) Business Days prior to the Closing a substantially final draft of any such reports reasonably likely to be required to be filed during the Delisting Period (Post-Closing SEC Reports). The Post-Closing SEC Reports provided by the Company pursuant to this Section 6.14 will (i) not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading and (ii) comply in all material respects with the provisions of applicable Laws.

Section 6.15 401(k). Except with the prior written consent of the Parent, during the period from the Agreement Date to the Effective Time, the Company shall not (a) make any discretionary contribution to the Company s 401(k) plan, other than employer matching contributions at the rate in effect immediately prior to the Agreement Date, or (ii) make any required contribution to the Company s 401(k) plan in Shares. If requested by the Parent in writing at least ten (10) days prior to the scheduled Expiration Date, the Company shall terminate the Company s 401(k) plan immediately prior to such scheduled Expiration Date.

Section 6.16 FIRPTA Certificate. The Company shall deliver to the Parent (a) a certification in a form tendered by Parent to the Company dated not more than thirty (30) days prior to the date of the consummation of the Offer and (b) to the extent necessary in light of the certification delivered pursuant to clause (a), an additional certification in a form tendered by Parent to the Company dated not more than thirty (30) days prior to the Effective Time, in each case signed by the Company and to the effect that the Shares are not United States real property interests within the meaning of section 897 of the Code; *provided, however*, that the Company s failure to provide such certification shall not be a condition to Closing under this Agreement, and the Parent shall be entitled to withhold from the Merger Consideration and pay over to the appropriate Taxing Authorities the amount required to be withheld under section 1445 of the Code.

Section 6.17 Rule 14d-10 Matters. Prior to the Agreement Date, the Company (acting through the Compensation Committee of the Company Board) has taken all such steps as may be required to cause any and all employment compensation, severance and employee benefit agreements and arrangements entered into by the Company or its Subsidiaries or contemplated hereby with any of their respective officers, directors or employees to be approved as an employment compensation, severance or other employee benefit arrangement within the meaning of Rule 14d 10(d)(1) under the Exchange Act and to satisfy the requirements of the non-exclusive safe harbor set forth in Rule 14d 10(d) under the Exchange Act. The Company has provided Parent with copies of all such actions.

Section 6.18 No Control of Other Party s Business. Nothing contained in this Agreement is intended to give the Parent, directly or indirectly, the right to control or direct the Company s or its Subsidiaries operations prior to the Share Acceptance Time, and nothing contained in this Agreement is intended to give the Company, directly or indirectly, the right to control or direct the Parent s or its Subsidiaries operations. Prior to the Effective Time, each of the Parent and the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Subsidiaries respective operations.

Section 6.19 Operations of the Purchaser. Prior to the Effective Time, the Purchaser shall not engage in any other business activities and shall not have incurred any liabilities or obligations other than as contemplated herein.

Section 6.20 Ownership of Shares. Prior to the Share Acceptance Time, none of the Parent or the Purchaser or their respective wholly owned Subsidiaries shall acquire any Shares except pursuant to this Agreement.

ARTICLE VII

CONDITIONS

Section 7.1 Conditions to Each Party s Obligation to Effect the Merger. The obligations of the Company, on the one hand, and the Parent and the Purchaser, on the other hand, to consummate the Merger are subject to the satisfaction (or waiver by the Company, the Parent and the Purchaser, if permissible under Law) of the following conditions:

(a) if required by the DGCL, the Company Stockholder Approval shall have been obtained;

(b) no Governmental Entity having jurisdiction over the Company, the Parent or the Purchaser shall have enacted or issued any Law or Order or taken any other action enjoining or otherwise prohibiting consummation of the Transactions on the terms contemplated by this Agreement;

(c) the waiting period (and any extensions thereof) applicable to the consummation of the Transactions under the HSR Act or the antitrust or competition Laws in the countries set forth on Schedule 7.1 attached hereto shall have expired or otherwise been terminated; and

(d) the Purchaser (or the Parent on the Purchaser s behalf) shall have accepted for payment and paid for all of the Shares validly tendered pursuant to the Offer and not properly withdrawn, *provided*, *however*, that this Section 7.1(d) shall not be a condition to the obligation of the Parent or the Purchaser to consummate the Merger if the failure to satisfy such condition shall arise from the Parent s or the Purchaser s breach of any provision of this Agreement.

Section 7.2 Frustration of Closing Conditions. None of the Company, the Parent or the Purchaser may rely on the failure of any condition set forth in Section 7.1 to be satisfied if such failure was caused by such party s failure to act in good faith or use its reasonable best efforts to consummate the Transactions, as required by and subject to Section 6.8.

ARTICLE VIII

TERMINATION

Section 8.1 Termination. Anything herein or elsewhere to the contrary notwithstanding, this Agreement may be terminated and the Offer, Merger and the other Transactions contemplated herein may be abandoned at any time prior to the Share Acceptance Time, whether before or after any requisite Company Stockholder Approval:

(a) by the mutual written consent of the Company and the Parent;

(b) by either the Company or the Parent:

(i) if as a result of the failure of any of the conditions set forth on Annex I to this Agreement, the Offer shall have terminated or expired in accordance with its terms (including after giving effect to any extensions) without the Purchaser having purchased any shares of Company Common Stock pursuant to the Offer on or prior to December 31, 2010 (the End Date); *provided, however*, that the right to terminate this Agreement under this Section 8.1(b)(i) shall not be available to any party whose material breach of this Agreement has been the cause of, or resulted in, the failure of such conditions to be satisfied on or prior to such date; or

(ii) if any Governmental Entity having jurisdiction over the Company, the Parent or the Purchaser shall have enacted or issued any Law or Order or taken any other material action, in each case such that the condition set forth in Section 7.1(b) or Section 7.1(c) would not be satisfied.

(c) by the Company:

(i) prior to the acceptance of Shares for payment pursuant to the Offer, upon a breach of any covenant or agreement on the part of the Parent or the Purchaser, or if any representation or warranty of

the Parent or the Purchaser shall be untrue, which breach or failure to be true would reasonably be expected to have a Parent Material Adverse Effect; *provided*, *however*, that if such breach or inaccuracy is capable of being cured prior to the earlier of (x) the End Date and (y) the date that is twenty (20) Business Days from the date the Parent is notified in writing by the Company of such breach or inaccuracy, the Company may not terminate the Agreement pursuant to this Section 8.1(c)(i) (1) prior to such date if the Parent and the Purchaser are taking reasonable best efforts to cure such breach or inaccuracy and (2) following such date if such breach or inaccuracy is cured at or prior to such date; *provided further* that the right to terminate this Agreement under this Section 8.1(c)(i) shall not be available to the Company if it has failed to perform in any material respect any of its obligations under or in connection with this Agreement;

(ii) prior to the acceptance of Shares for payment pursuant to the Offer, in order to accept a Superior Proposal in compliance with Section 6.3(e); or

(iii) if, for any reason, (x) the Purchaser shall have failed to commence the Offer within fifteen (15) Business Days after the Agreement Date, *provided*, that the Company may not terminate this Agreement pursuant to this Section 8.1(c)(iii)(x) if such failure to commence the Offer has resulted from the breach of this Agreement by the Company or if the Company has not provided the Purchaser with a Schedule 14D-9 the Company is prepared to file, without further revisions, (y) the Purchaser terminates or makes any change to the Offer in breach of the terms of this Agreement or (z) the Purchaser shall have breached its obligations to accept for purchase all Shares validly tendered and not properly withdrawn as of the Initial Expiration Date or any subsequent Expiration Date established in accordance with the terms of this Agreement.

(d) By the Parent or the Purchaser:

(i) upon a breach of any covenant or agreement on the part of the Company, or if any representation or warranty of the Company shall be untrue, in any case such that a condition set forth in Annex I would not be satisfied; *provided*, *however*, that if such breach or inaccuracy is capable of being cured prior to the earlier of (x) the End Date and (y) the date that is twenty (20) Business Days from the date the Company is notified in writing by the Parent of such breach or inaccuracy, the Parent and the Purchaser may not terminate the Agreement pursuant to this Section 8.1(d)(i) (1) prior to such date if the Company is taking reasonable best efforts to cure such breach or inaccuracy and (2) following such date if such breach or inaccuracy is cured at or prior to such date; *provided further* that the right to terminate this Agreement under this Section 8.1(d)(i) shall not be available to the Parent or the Purchaser if either of them has failed to perform in any material respect any of its obligations under or in connection with this Agreement; or

(ii) if, prior to the acceptance of Shares for payment pursuant to the Offer, the Company Board shall have made a Change of Recommendation.

Section 8.2 Effect of Termination.

(a) In the event of the termination of this Agreement in accordance with Section 8.1, written notice thereof shall forthwith be given to the other party or parties specifying the provision hereof pursuant to which such termination is made and a reasonably detailed description of the basis therefor, and this Agreement shall forthwith become null and void, and there shall be no liability on the part of the Parent, the Purchaser or the Company or their respective directors, officers, employees, stockholders, Representatives, agents or advisors other than, with respect to the Parent, the Purchaser and the Company, the obligations pursuant to this Section 8.2, and Article IX, the last sentence of Section 6.2 and Section 6.5; *provided, however*, that except as set forth in Section 8.2(b) nothing contained in this Section 8.2 shall relieve the Parent, the Purchaser or the Company from liability for fraud or willful breach of their respective covenants and agreements set forth in this Agreement.

(b) If

(i) this Agreement is terminated by the Company pursuant to Section 8.1(c)(ii),

(ii) this Agreement is terminated by the Parent pursuant to Section 8.1(d)(ii),

(iii) this Agreement is terminated by the Parent pursuant to Section 8.1(b)(i) following a knowing, material breach by the Company or its Subsidiaries or Representatives of Section 6.3, or

(iv)(x) this Agreement is terminated by the Company or Parent pursuant to Section 8.1(b)(i) (but only if at such time the Parent would not be prohibited from terminating this Agreement by the proviso in Section 8.1(b)(i)), (y) there has been publicly disclosed after the Agreement Date and prior to the date of termination of this Agreement an Acquisition Proposal that remains outstanding and not withdrawn as of the date of termination of this Agreement, and (z) within twelve (12) months after such termination of this Agreement, the Company enters into a definitive agreement with respect to a Qualifying Transaction or consummates a Qualifying Transaction (in each case regardless of whether the Qualifying Transaction is the Acquisition Proposal referred to in clause (y)),

then the Company shall pay to the Parent a termination fee of $83,650,522 in cash (the Termination Fee),

(A) concurrently with any termination pursuant to Section 8.1(c)(ii),

(B) within one (1) Business Day after termination pursuant to Section 8.1(d)(ii) or pursuant to Section 8.1(b)(i) if Parent is entitled to the Termination Fee under Section 8.2(b)(iii), and

(C) within one (1) Business Day after the Company executes and delivers a definitive agreement with respect to (or, if earlier, consummates) a Qualifying Transaction as set forth in Section 8.2(b)(iv);

it being understood that in no event shall the Company be required to pay the Termination Fee on more than one occasion. Upon payment of the Termination Fee pursuant to Section 8.2(b)(i), the Company shall have no further liability to the Parent or the Purchaser with respect to this Agreement or the Transaction, *provided* that nothing herein shall release the Company from liability for intentional breach or fraud. All payments contemplated by this Section 8.2(b) shall be made by wire transfer of immediately available funds to an account designated by the Parent and shall be reduced by any amounts required to be deducted or withheld therefrom under applicable Law in respect of Taxes. If the Company fails to promptly make any payment required under this Section 8.2(b) and the Parent commences a suit to collect such payment, the Company shall indemnify the Parent for its fees and expenses (including attorneys fees and expenses) incurred in connection with such suit and shall pay interest on the amount of the payment at the prime rate of Bank of America (or its successors or assigns) in effect on the date the payment was payable pursuant to this Section 8.2(b).

(c) As used in this Agreement: Qualifying Transaction means any acquisition of (i) 50% or more of the outstanding Shares pursuant to a merger, consolidation or other business combination, sale of shares of capital stock, tender offer or exchange offer or similar transaction involving the Company or (ii) all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Amendment and Modification. Subject to applicable Law, this Agreement may be amended, modified and supplemented in any and all respects, whether before or after any vote of the Company Stockholders contemplated hereby, by written agreement of the parties hereto, at any time prior to the Closing Date with respect to any of the terms contained herein; *provided, however*, that after the approval of this Agreement by the Company Stockholders, no such amendment, modification or supplement shall reduce or change the Merger Consideration or adversely affect the rights of the Company Stockholders hereunder without the approval of such stockholders.

Section 9.2 Non-Survival of Representations and Warranties. None of the representations and warranties in this Agreement or in any schedule, instrument or other document delivered pursuant to this Agreement shall survive the Effective Time or the termination of this Agreement. This Section 9.2 shall not limit any covenant or agreement contained in this Agreement that by its terms is to be performed in whole or in part after the Effective Time.

Section 9.3 Notices. All notices, consents and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by hand delivery, by prepaid overnight courier (providing written proof of delivery), by confirmed facsimile transmission or by certified or registered mail (return receipt requested and first class postage prepaid), addressed as follows:

(a) if to the Parent or the Purchaser, to:

c/o Covidien

15 Hampshire Street

Mansfield, MA 02048

Facsimile: (508) 261-8544

Attention: Vice President Chief Mergers & Acquisitions Counsel

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

Ropes & Gray LLP

One International Place

Boston, MA 02110

Facsimile: (617) 951-7050

Attention: Paul M. Kinsella

Keith F. Higgins

(b) if to the Company, to:

ev3, Inc.

3033 Campus Drive

Plymouth, MN 55441

Facsimile: (763) 398-7200

Attention: Kevin M. Klemz, Esq.

with copies (which shall not constitute notice) to:

Oppenheimer Wolff & Donnelly LLP

Plaza VII, Suite 3300

45 South Seventh Street, Suite 3300

Minneapolis, MN 55402

Facsimile: (612) 607-7100

Attention: Bruce A. Machmeier

Travis J. Anderson

and

Willkie Farr & Gallagher LLP

787 Seventh Avenue

New York, NY 10019

Facsimile: (212) 728-8111

Attention: Steven J. Gartner

Adam M. Turteltaub

or to such other address or facsimile number for a party as shall be specified in a notice given in accordance with this section; *provided* that any notice received by facsimile transmission or otherwise at the addressee s location

on any Business Day after 5:00 P.M. (addressee s local time) shall be deemed to have been received at 9:00 A.M. (addressee s local time) on the next Business Day; *provided further* that notice of any change to the address or any of the other details specified in or pursuant to this section shall not be deemed to have been received until, and shall be deemed to have been received upon, the later of the date specified in such notice or the date that is five (5) Business Days after such notice would otherwise be deemed to have been received pursuant to this section. Nothing in this section shall be deemed to constitute consent to the manner or address for service of process in connection with any legal proceeding, including litigation arising out of or in connection with this Agreement.

Section 9.4 Interpretation. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

Section 9.5 Counterparts. This Agreement may be executed by facsimile or portable document format (pdf) transmission and in separate counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts will together constitute the same agreement.

Section 9.6 Entire Agreement; Third-Party Beneficiaries. This Agreement (including the Company Disclosure Schedule, the Parent Disclosure Schedule and the exhibits and instruments referred to herein), the Confidentiality Agreement and the Tender and Voting Agreement (a) constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and (b) except (i) for the rights of the Company Stockholders to receive the Merger Consideration following the Effective Time in accordance with Article III, (ii) as provided in Section 6.6 (which is intended for the benefit of the Company s former and current officers and directors and other indemnitees, all of whom shall be third-party beneficiaries of these provisions) and (iii) as provided in Section 9.19 (which is intended for the benefit of any entities that have committed to provide or otherwise entered into agreements in connection with the Financing, any Alternative Financing or other financings in connection with the transactions contemplated hereby (including the parties to the Debt Financing Letter and any joinder agreements, credit agreements or any other definitive agreements relating thereto) and their respective Affiliates (the Financing Sources)) are not intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

Section 9.7 Severability. Any term or provision of this Agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms and provisions hereof. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid, illegal or unenforceable, the parties hereto agree that the court making such determination shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid, illegal or unenforceable term or provision with a term or provision that is valid, legal and enforceable and that comes closest to expressing the intention of the invalid, illegal or unenforceable term or provision, and this Agreement shall be enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the parties hereto agree to replace such invalid, illegal or unenforceable term or provision with a valid, legal and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid, illegal or unenforceable term.

Section 9.8 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware applicable to contracts to be made and performed entirely therein without giving effect to the principles of conflicts of law thereof or of any other jurisdiction.

Section 9.9 Jurisdiction. Each of the parties hereto hereby (a) expressly and irrevocably submits to the exclusive personal jurisdiction of any United States federal court located in the State of Delaware or any Delaware state court in the event any dispute arises out of this Agreement or any of the Transactions, (b) agrees

that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court and (c) agrees that it will not bring any action relating to this Agreement or any of the Transactions in any court other than a United States federal or state court sitting in the State of Delaware; *provided* that each of the parties shall have the right to bring any action or proceeding for enforcement of a judgment entered by any United States federal court located in the State of Delaware or any Delaware state court in any other court or jurisdiction.

Section 9.10 Service of Process. Each party irrevocably consents to the service of process outside the territorial jurisdiction of the courts referred to in Section 9.9 in any such action or proceeding by mailing copies thereof by registered United States mail, postage prepaid, return receipt requested, to its address as specified in or pursuant to Section 9.3. However, the foregoing shall not limit the right of a party to effect service of process on the other party by any other legally available method.

Section 9.11 Specific Performance.

(a) The parties hereto acknowledge and agree that, in the event of any breach of this Agreement, the other parties would be irreparably and immediately harmed and could not be made whole by monetary damages. It is accordingly agreed that (i) each party hereby waives, in any action for specific performance, any and all defenses in any action for specific performance, including the defense of adequacy of a remedy at Law and (ii) each party shall be entitled, in addition to any other remedy to which they may be entitled at Law or in equity, to specific performance of the terms of this Agreement and to prevent or restrain breaches or threatened breaches of this Agreement in any action instituted in accordance with Section 9.9, in each case without the posting of a bond or undertaking or other security as a prerequisite to obtaining equitable relief.

(b) Notwithstanding the parties rights to specific performance or injunctive relief or both pursuant to Section 9.11(a), each party may pursue any other remedy available to it at Law or in equity, including monetary damages; provided, that it is understood and agreed that claims for monetary damages following termination of this Agreement shall be (i) limited to those arising from or relating to any intentional breach of this Agreement or fraud prior to such termination and (ii) subject to the penultimate sentence of Section 8.2(b). Notwithstanding anything in this Agreement to the contrary, prior to the termination of this Agreement in accordance with its terms, no party hereto shall be permitted to make any claim or commence any action, suit or proceeding seeking monetary damages against any other party hereto in connection with or arising out of this Agreement or the Transactions, provided that the foregoing shall be without prejudice to the right of any party to seek such monetary damages following such termination in accordance with, and subject to the limitations set forth in, this Agreement.

Section 9.12 Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties, except that Purchaser may assign, in its sole discretion and without the consent of any other party, any or all of its rights, interests, and obligation hereunder to (i) the Parent, (ii) the Parent and one or more direct or indirect wholly-owned Subsidiaries of the Parent, (iii) one or more direct or indirect wholly-owned Subsidiaries of the Parent, or (iv) any direct or indirect holder of five percent (5%) or more of the capital stock of the Parent or any Subsidiary thereof (each, an Assignee). Any such Assignee may thereafter assign, in its sole discretion and without the consent of any other party, any or all of its rights, interests, and obligations hereunder to one or more additional Assignees; *provided, however*, that (x) in no event will any assignment to an Assignee cause a material delay or impair the ability of the Parent and the Purchaser to consummate the Transactions and (y) in connection with any assignment to an Assignee, the Parent and the Purchaser (and the assignor, if applicable) shall agree to remain liable for the performance by the Parent and the Purchaser (and such assignor, if applicable) of their obligation hereunder. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective permitted successors and assigns.

Section 9.13 Expenses. Except as otherwise provided in this Agreement, all costs and expenses incurred in connection with the Merger, this Agreement and the consummation of the Transactions shall be paid by the party incurring such costs and expenses, whether or not the Merger or any of the other Transactions is consummated.

Section 9.14 Headings. Headings of the articles and sections of this Agreement and the table of contents, schedules and exhibits are for convenience of the parties only and shall be given no substantive or interpretative effect whatsoever.

Section 9.15 Currency. All references to dollars or $ or US$ in this Agreement refer to United States dollars, which is the currency used for all purposes in this Agreement.

Section 9.16 Construction; Interpretation. For purposes of this Agreement:

(a) The words hereof, herein and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and references to articles, sections, paragraphs, exhibits and schedules are to the articles, sections and paragraphs of, and exhibits and schedules to, this Agreement, unless otherwise specified.

(b) Whenever include, includes or including is used in this Agreement, such word shall be deemed to be followed by the phrase without limitation.

(c) Words describing the singular number shall be deemed to include the plural and vice versa, words denoting any gender shall be deemed to include all genders and words denoting natural persons shall be deemed to include business entities and vice versa.

(d) When used in reference to information or documents, the phrase made available means that the information or documents referred to have been made available if requested by the party to which such information or documents are to be made available.

(e) Terms defined in the text of this Agreement as having a particular meaning have such meaning throughout this Agreement, except as otherwise indicated in this Agreement.

Section 9.17 Waivers. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, covenant, agreement or condition herein may be waived by the party or parties entitled to the benefits thereof only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 9.18 WAIVER OF JURY TRIAL. EACH OF THE PARENT, THE PURCHASER AND THE COMPANY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY DISPUTE ARISING OUT OF OR RELATING IN ANY WAY TO THE DEBT FINANCING LETTER OR THE PERFORMANCE THEREOF, OR THE ACTIONS OF THE PARENT, THE PURCHASER OR THE COMPANY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT THEREOF. Each party to this Agreement certifies and acknowledges that (a) no Representative of any other party has represented, expressly or otherwise, that such other party would not seek to enforce the foregoing waiver in the event of a legal action, (b) such party has considered the implications of this waiver, (c) such party makes this waiver voluntarily, and (d) such party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 9.18.

Section 9.19 Financing Sources Arrangements. Notwithstanding anything contained herein to the contrary (including Section 9.9), each of the parties hereto agrees (a) that it will not bring or support any action, cause of

action, claim, cross-claim or third-party claim of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against any of the Financing Sources in any way relating to this Agreement or any of the transactions contemplated by this Agreement, including, but not limited to, any dispute arising out of or relating in any way to the Debt Financing Letter or the performance thereof, in any forum other than the federal and New York State courts located in the City of New York and (b) that the waiver contained in Section 9.18 shall apply to any such action, cause of action, claim, cross-claim or third-party claim.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Company, the Parent and the Purchaser have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

EV3 INC.

By: /s/ Kevin M. Klemz
Name: **Kevin M. Klemz**
Title: **Senior Vice President, Secretary and Chief Legal Officer**

COVIDIEN GROUP S.A.R.L.

By: /s/ Michelangelo Stefani
Name: **Michelangelo Stefani**
Title: **General Manager**

COV DELAWARE CORPORATION

By: /s/ Matthew J. Nicolella
Name: **Matthew J. Nicolella**
Title: **Vice President & Assistant Secretary**

ANNEX I

Capitalized terms used in this Annex I and not otherwise defined herein shall have the meanings assigned to them in the Agreement and Plan of Merger to which it is attached (the Agreement).

Notwithstanding any other provisions of the Offer, the Purchaser shall not be required to, and the Parent shall not be required to cause the Purchaser to, accept for payment, purchase or, subject to any applicable rules and regulations of the SEC, including Rule 14e-19(c) promulgated under the Exchange Act, pay for any validly tendered Shares and may delay the acceptance for payment of, purchase or, subject to the restrictions referred to above, the payment for, any validly tendered Shares, if:

(a) the Minimum Condition shall not have been satisfied at the Expiration Date;

(b) the applicable waiting period under the HSR Act and any applicable antitrust Law in the countries set forth on Schedule 7.1 attached hereto in respect of the transactions contemplated by the Agreement has not expired or been terminated at or prior to the Expiration Date;

(c) any of the following conditions exists or has occurred, and is continuing at the Expiration Date:

(i) there shall be pending any suit, action or proceeding brought by any Governmental Entity (A) seeking to prohibit or impose any material limitations on the Parent s or the Purchaser s ownership or operation (or that of any of their respective Subsidiaries) of all or any material portion of the Company s or the Company s Subsidiaries businesses or assets, taken as a whole, (B) seeking to prohibit or make illegal the making or consummation of the Offer or the Merger or the performance of any of the other Transactions, (C) seeking to impose material limitations on the ability of the Purchaser, or render the Purchaser unable, to accept for payment, pay for or purchase some or all of the Shares pursuant to the Offer or the Merger, (D) seeking to impose material limitations on the ability of the Purchaser or the Parent effectively to exercise full rights of ownership of the Shares, including, without limitation, the right to vote the Shares purchased by it on all matters properly presented to the Company Stockholders, or (E) seeking to require divestiture by the Parent or any of its Subsidiaries of any Shares;

(ii) there shall be any Law or Order enacted, entered, enforced, promulgated or deemed applicable, pursuant to an authoritative interpretation by or on behalf of a Governmental Entity, to the Offer, the Merger or any other Transaction, or any other action shall be taken by any Governmental Entity, that would reasonably be expected to result, directly or indirectly, in any of the consequences referred to in clauses (A) through (E) of paragraph (c)(i) of this Annex I;

(iii) any of the representations and warranties of the Company contained in this Agreement shall not be true and accurate when made or at the consummation of the Offer, except (1) those representations and warranties that address matters only as of a particular date or only with respect to a specific period of time, which representations and warranties need only be true and accurate as of such date or with respect to such period), (2) any representation or warranty of the Company contained in Section 4.2 (subject to de minimus exceptions involving discrepancies of no more than 20,000 shares in the aggregate of Company Common Stock or Company Common Stock issuable pursuant to Company Options, Company Restricted Stock or Company RSUs), and Section 4.3 shall be deemed to be not true and accurate if it fails to be true and accurate in all respects, and (3) for any representation or warranty of the Company (other than any representation or warranty referred to in clause 2 above), where failure to be so true and accurate, individually or in the aggregate, does not have or would not reasonably be expected to have a Company Material Adverse Effect (without giving effect to any limitation as to materiality or material adverse effect set forth therein);

(iv) the Company shall have breached or failed, in any material respect, to perform or to comply with any agreement or covenant required to be performed or complied with by it under the Agreement;

(v) since the date of the Agreement, a Company Material Adverse Effect shall have occurred and be continuing;

(vi) the Parent and the Purchaser shall have failed to receive a certificate executed by the Company s Chief Executive Officer or President on behalf of the Company, dated as of the then-scheduled expiration of the Offer, to the effect that the conditions set forth in paragraphs (c)(iii), (iv) and (v) of this Annex I have not occurred; or

(vii) the Agreement shall have been terminated in accordance with its terms.

The foregoing conditions are for the sole benefit of the Parent and the Purchaser and may be asserted by the Parent or the Purchaser regardless of the circumstances giving rise to any such conditions and may be waived by the Parent or the Purchaser in whole or in part at any time and from time to time in their sole discretion (except the Minimum Condition may not be waived), in each case, subject to the terms of the Agreement and applicable Laws. The failure by the Parent or the Purchaser at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

Annex II

FORM OF TENDER AND VOTING AGREEMENT

TENDER AND VOTING AGREEMENT

THIS TENDER AND VOTING AGREEMENT (this Agreement) dated June 1, 2010, is entered into between Covidien Group S.a.r.l., a Luxembourg company (Parent), COV Delaware Corporation, a Delaware corporation and direct or indirect wholly owned subsidiary of Parent (Purchaser), and , (Stockholder), with respect to [ ] shares of common stock, par value $0.01 per share (the Shares), of ev3 Inc., a Delaware corporation (the Company).

W I T N E S S E T H:

WHEREAS, the Parent, the Purchaser and the Company have entered into an Agreement and Plan of Merger dated as of the date hereof (as the same may be amended or supplemented, other than to lower the price to be paid in the Offer or Merger, the Merger Agreement) pursuant to which the Purchaser has agreed to make a cash tender offer as described therein and thereafter merge with and into the Company (the Merger) with the result that the Company becomes a wholly owned subsidiary of the Parent;

WHEREAS, as of the date hereof, Stockholder beneficially owns and has the power to dispose of the Shares and has the power to vote such Shares;

WHEREAS, the Parent and the Purchaser desire to enter into this Agreement in connection with their efforts to consummate the acquisition of the Company;

WHEREAS, Stockholder wishes to convey to Parent and Purchaser pursuant to and subject to the terms of this Agreement beneficial ownership of only [ ] of the Shares (such number of Shares being referred to herein as the Permissible Number);

WHEREAS, capitalized terms used in this Agreement and not defined have the meaning given to such terms in the Merger Agreement.

NOW, THEREFORE, in contemplation of the foregoing and in consideration of the mutual agreements, covenants, representations and warranties contained herein and intending to be legally bound hereby, the parties hereto agree as follows:

1. Certain Covenants.

Section 1.1 Lock-Up. Subject to Section 1.5, except as contemplated by the Merger Agreement, Stockholder hereby covenants and agrees that between the date hereof and the Termination Date, Stockholder will not (a) directly or indirectly, sell, transfer, assign, pledge, hypothecate, tender, encumber or otherwise dispose of or limit its right to vote in any manner any of the Shares, or agree to do any of the foregoing, or (b) take any action which would have the effect of preventing or disabling Stockholder from performing its obligations under this Agreement. Notwithstanding the foregoing, in connection with any transfer not involving or relating to any Acquisition Proposal (as defined in the Merger Agreement), Stockholder may transfer any or all of the Shares to any Affiliate, subsidiary, partner or member of Stockholder; provided, however, that in any such case, prior to and as a condition to the effectiveness of such transfer, (A) each Person to which any of such Shares or any interest in any of such Shares is or may be transferred shall have executed and delivered to the Parent and the Purchaser a counterpart to this Agreement pursuant to which such Person shall be bound by all of the terms and provisions of this Agreement, and (B) this Agreement shall be the legal, valid and binding agreement of such Person, enforceable against such person in accordance with its terms.

Section 1.2 No Solicitation. Between the date hereof and the Termination Date, the Stockholder shall not, and shall not authorize or permit, any director, officer, agent, representative, employee, affiliate, advisor, attorney, accountant or associate of Stockholder or those of its subsidiaries (collectively, Representatives) to, directly or indirectly, take any action, in its or their capacity as a stockholder of the Company, that the Company is prohibited from taking pursuant to Section 6.3 of the Merger Agreement.

Section 1.3 Certain Events. This Agreement and the obligations hereunder will attach to the Shares and will be binding upon any person to which legal or beneficial ownership of any or all of the Shares passes, whether by operation of Law or otherwise, including without limitation, the Stockholder s successors or assigns. This Agreement and the obligations hereunder will also attach to any additional shares of common stock issued to or acquired by the Stockholder, but such additional shares shall not be Optioned Shares for purposes of this Agreement.

Section 1.4 Grant of Proxy; Voting Agreement.

(a) The Stockholder has revoked or terminated any proxies, voting agreements or similar arrangements previously given or entered into with respect to the Shares and hereby grants Parent until the Termination Date a limited irrevocable proxy to vote the Permissible Number of Shares as to which Stockholder has voting power for Stockholder and in Stockholder s name, place and stead, at any annual or special meeting of the stockholders of the Company, as applicable, or at any adjournment thereof, whether before or after the Share Acceptance Time (as defined in the Merger Agreement), solely for the adoption of the Merger Agreement and the approval of the Merger. The Parent hereby acknowledges that the proxy granted hereby shall not be effective for any other purpose. The parties acknowledge and agree that neither the Parent, nor the Parent s successors, assigns, subsidiaries, divisions, employees, officers, directors, stockholders, agents and affiliates shall owe any duty to, whether in law or otherwise, or incur any liability of any kind whatsoever, including without limitation, with respect to any and all claims, losses, demands, causes of action, costs, expenses (including reasonable attorney s fees) and compensation of any kind or nature whatsoever to the Stockholder in connection with or as a result of any voting by the Parent of the Permissible Number of Shares subject to the irrevocable proxy hereby granted to the Parent at any annual or special meeting of the stockholders of the Company for the purpose set forth herein.

(b) During the term of this Agreement, Stockholder agrees to vote the Shares as to which it has not given a proxy pursuant to paragraph (a) above in favor of or give its consent to, as applicable, a proposal to adopt the Merger Agreement and thereby approve the Merger at any annual or special meeting of the stockholders of the Company. In addition, notwithstanding the foregoing grant to the Parent of the irrevocable proxy on the Optioned Shares, if the Parent elects not to exercise its rights to vote the Permissible Number of Shares pursuant to the irrevocable proxy, Stockholder also agrees to vote the Permissible Number of Shares in favor of or give its consent to, as applicable, a proposal to adopt the Merger Agreement and thereby approve the Merger at any annual or special meeting of the stockholders of the Company.

(c) This irrevocable proxy shall not be terminated by any act of the Stockholder or by operation of law (including, without limiting the foregoing, by the dissolution or liquidation of any corporation or partnership). If between the execution hereof and the Termination Date, if any corporation or partnership holding the Shares should be dissolved or liquidated, or if any other such similar event or events shall occur before the Termination Date, certificates representing the Shares shall be delivered by or on behalf of Stockholder in accordance with the terms and conditions of the Merger Agreement and this Agreement, and actions taken by the Parent hereunder shall be as valid as if such dissolution, liquidation or other similar event or events had not occurred, regardless of whether or not the Parent has received notice of such dissolution, liquidation or other event.

Section 1.5 Tender of Shares. Stockholder agrees, in exchange for the consideration described in the Merger Agreement, to tender the Shares to the Purchaser in the Offer not later than five (5) Business Days following the commencement of the Offer (such Shares being referred to herein as

the Tender Shares); provided, however, that Stockholder may withdraw any Tender Shares so tendered above at any time following the termination or expiration of the Offer without Purchaser purchasing all shares of common stock tendered pursuant to the Offer in accordance with its terms; provided, further, that Stockholder shall not have any obligation under this Section 1.5 to tender the Tender Shares into the Offer if that tender could cause the Stockholder to incur liability under Section 16(b) of the Exchange Act.

Section 1.6 Option.

(a) On the terms and subject to the conditions set forth herein, Stockholder hereby grants to Parent an irrevocable option (the Option) to purchase all of the right, title and interest of Stockholder in and to the Permissible Number of Stockholder s Shares (the Optioned Shares) with a price per share equal to the Offer Price. Parent may exercise the Option in whole, but not in part, if, but only if, (i) the Purchaser has acquired shares of common stock pursuant to the Offer and (ii) Stockholder has failed to tender into the Offer at least the Permissible Number of Shares or shall have withdrawn the tender of a number of Shares equal to or greater than the Permissible Number in breach of this Agreement. The Parent may exercise the Option at any time within the sixty (60) days following the date when such Option first becomes exercisable.

(b) In the event that the Parent is entitled to and wishes to exercise the Option, the Parent shall send a written notice to Stockholder specifying the place and the date for the closing of such purchase, which date shall be not more than sixty (60) days after the date of such notice; provided that in the event that prior notification to, or approval of, any Governmental Entity is required in connection with the exercise of the Option or there shall be in effect any preliminary or final injunction or other order issued by any Governmental Entity prohibiting the exercise of the Option, the period of time during which the date of the closing may be fixed shall be extended until the tenth (10th) day following the last date on which all required approvals shall have been obtained, all required waiting periods shall have expired or been terminated and any such prohibition shall have been vacated, terminated or waived.

(c) At the closing of the purchase of Stockholder s Optioned Shares pursuant to exercise of the Option, simultaneously with the payment by the Parent of the purchase price for Stockholder s Optioned Shares, such Stockholder shall deliver, or cause to be delivered, to the Purchaser certificates representing the Optioned Shares duly endorsed to the Parent or accompanied by stock powers or other transfer documents duly executed by the Company in blank, together with any necessary stock transfer stamps properly affixed, free and clear of all Liens.

(d) The Parent, the Purchaser or the Company, as applicable, shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Section 1.6 to Stockholder such amounts as are required to be withheld under the Code or the Treasury Regulations thereunder or any other Tax Law.

Section 1.7 Public Announcement. Stockholder shall consult with the Parent before issuing any press releases or otherwise making any public statements with respect to the transactions contemplated herein and shall not issue any such press release or make any such public statement without the approval of the Parent (which approval shall not be unreasonably withheld, conditioned or delayed), except as may be required by Law, including any filings with the Securities and Exchange Commission (the SEC) pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act). This Section 1.7 shall terminate and be null and void upon the earlier of (a) the Termination Date and (b) consummation of the Merger.

Section 1.8 Disclosure. Stockholder hereby authorizes the Parent and the Purchaser to publish and disclose in any announcement or disclosure required by the SEC, The Nasdaq Stock Market or any other national securities exchange and in the Offer Documents and, if necessary, the Proxy Statement (including all documents and schedules filed with the SEC in connection with either of the foregoing), Stockholder s identity and ownership of the Shares and the nature of Stockholder s commitments, arrangements and

understandings under this Agreement. The Parent and the Purchaser hereby authorize Stockholder to make such disclosure or filings as may be required by the SEC or The Nasdaq Stock Market or any other national securities exchange.

2. Representations and Warranties of Stockholder. Stockholder hereby represents and warrants to the Parent and the Purchaser, as of the date hereof and as of the date the Purchaser purchases Tender Shares from Stockholder pursuant to the Offer, that:

Section 2.1 Ownership. As of the date hereof, Stockholder holds of record or beneficially the Shares set forth on Schedule I, in each case, except as set forth on Schedule I, free and clear of all liabilities, claims, liens, options, proxies, charges, participations and encumbrances of any kind or character whatsoever, other than those arising under the securities laws or under the Company s governance documents (collectively, Liens). At the time the Purchaser purchases Tender Shares from Stockholder pursuant to the Offer, Stockholder will transfer and convey to the Purchaser good and marketable title to the Shares included in the Shares, free and clear of all Liens created by or arising through Stockholder.

Section 2.2 Authorization. Stockholder has all requisite power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and has the power to vote and the power to dispose of the Shares with no restrictions on its voting rights or rights of disposition pertaining thereto, except as set forth in this Agreement or that may exist pursuant to the securities laws. Stockholder has duly executed and delivered this Agreement and this Agreement is a legal, valid and binding agreement of Stockholder, enforceable against Stockholder in accordance with its terms, except to the extent enforceability may be limited by the effect of applicable bankruptcy, reorganization, insolvency, moratorium or other Laws affecting the enforcement of creditors rights generally and the effect of general principles of equity, regardless of whether such enforceability is considered in a proceeding at Law or in equity.

Section 2.3 No Violation. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (a) require the Stockholder to file or register with, or obtain any permit, authorization, consent or approval of, any Governmental Entity other than filings with the SEC pursuant to the Exchange Act, or (b) violate, or cause a breach of or default under, or conflict with any contract, agreement or understanding, any Law binding upon the Stockholder, except for such violations, breaches, defaults or conflicts which are not, individually or in the aggregate, reasonably likely to have a material adverse effect on the Stockholder s ability to satisfy its obligations under this Agreement. As of the date hereof, no proceedings are pending which, if adversely determined, will have a material adverse effect on the Stockholder s ability to vote or dispose of any of the Shares.

Section 2.4 Stockholder Has Adequate Information. Stockholder is a sophisticated seller with respect to the Shares and has adequate information concerning the business and financial condition of the Company to make an informed decision regarding the sale of the Shares and has independently and without reliance upon either the Purchaser or the Parent and based on such information as Stockholder has deemed appropriate, made its own analysis and decision to enter into this Agreement. Stockholder acknowledges that neither the Purchaser nor the Parent has made and neither makes any representation or warranty, whether express or implied, of any kind or character except as expressly set forth in this Agreement. Stockholder acknowledges that the agreements contained herein with respect to the Shares held by Stockholder are irrevocable (prior to the Termination Date).

Section 2.5 No Setoff. The Stockholder has no liability or obligation related to or in connection with the Shares other than the obligations to the Parent and the Purchaser as set forth in this Agreement.

3. Representations and Warranties of the Parent and the Purchaser. The Parent and the Purchaser hereby represent and warrant to Stockholder, as of the date hereof that:

Section 3.1 Authorization. The Parent and the Purchaser have all requisite corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby.

The Parent and the Purchaser have duly executed and delivered this Agreement and this Agreement is a legal, valid and binding agreement of each of the Parent and the Purchaser, enforceable against each of the Parent and the Purchaser in accordance with its terms, except to the extent enforceability may be limited by the effect of applicable bankruptcy, reorganization, insolvency, moratorium or other Laws affecting the enforcement of creditors rights generally and the effect of general principles of equity, regardless of whether such enforceability is considered in a proceeding at Law or in equity.

Section 3.2 No Violation. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will violate, or cause a breach of or default under, any contract or agreement, any statute or law, or any judgment, decree, order, regulation or rule of any Governmental Entity, except for such violations, breaches or defaults which are not reasonably likely to have a material adverse effect on either the Parent s or the Purchaser s ability to satisfy its obligations under this Agreement.

4. Survival of Representations and Warranties. None of the representations and warranties contained in this Agreement shall survive the Termination Date. The respective representations and warranties of Stockholder, the Parent and the Purchaser contained herein shall not be deemed waived or otherwise affected by any investigation made by the other party hereto.

5. Specific Performance. Stockholder acknowledges that the Parent and the Purchaser will be irreparably harmed and that there will be no adequate remedy at law for a violation of any of the covenants or agreements of Stockholder which are contained in this Agreement. It is accordingly agreed that, in addition to any other remedies which may be available to the Parent and the Purchaser upon the breach by Stockholder of such covenants and agreements, the Parent and the Purchaser shall have the right to obtain injunctive relief to restrain any breach or threatened breach of such covenants or agreements or otherwise to obtain specific performance of any of such covenants or agreements.

6. Miscellaneous.

Section 6.1 Term. This Agreement and all obligations hereunder shall terminate upon the earlier of (a) the Effective Time, (b) the End Date, (c) the date of any modification, waiver, change or amendment of the Offer or the Merger Agreement executed after the date hereof that results in a (i) a decrease in the Offer Price or Merger Consideration (each as defined in the Merger Agreement on the date hereof) or (ii) a change in the form of consideration to be paid in the Offer or in the form of Merger Consideration, and (d) the termination of the Merger Agreement in accordance with its terms (the earliest of (a), (b), (c) and (d), the Termination Date). Upon termination of this Agreement, no party shall have any further obligations or liabilities under this Agreement; provided, however, that (i) nothing set forth in this Section 6.1 shall relieve any party from liability for any willful breach of this Agreement prior to termination hereof, and (ii) the provisions of this Article 6 shall survive any termination of this Agreement.

Section 6.2 Capacity as a Stockholder; Fiduciary Duties. Notwithstanding anything in this Agreement to the contrary: (a) the Stockholder makes no agreement or understanding herein in any capacity other than in the Stockholder s capacity as a record holder and beneficial owner of Shares, and not in such Stockholder s capacity as a director, officer or employee of the Company or any of Company Subsidiaries or in such Stockholder s capacity as a trustee or fiduciary of any employee benefit plan or trust, and (b) nothing herein will be construed to limit or affect any action or inaction by the Stockholder or any Representative of the Stockholder, as applicable, serving on the Company Board or on the board of directors of any Subsidiary of the Company or as an officer or fiduciary of the Company, any Subsidiary of the Company or any employee benefit plan or trust, acting in such person s capacity as a director, officer, trustee and/or fiduciary.

Section 6.3 Expenses. Each of the parties hereto shall pay its own expenses incurred in connection with this Agreement. Each of the parties hereto warrants and covenants to the others that it will bear all claims for brokerage fees attributable to action taken by it.

Section 6.4 Binding Effect. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective representatives and permitted successors and assigns.

Section 6.5 Entire Agreement. This Agreement contains the entire understanding of the parties and supersedes all prior agreements and understandings between the parties with respect to its subject matter. This Agreement may be amended only by a written instrument duly executed by the parties hereto.

Section 6.6 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 6.7 Assignment. Without limitation to Section 1.1 and subject to this Section 6.7, this Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns. No party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other parties; provided, however, that the Purchaser may freely assign, in its sole discretion and without the consent of any other party, any or all of its rights, interests and obligations hereunder to (i) the Parent, (ii) the Parent and one or more direct or indirect wholly-owned Subsidiaries of the Parent, (iii) one or more direct or indirect wholly-owned Subsidiaries of the Parent, or (iv) any direct or indirect holder of five percent (5%) or more of the capital stock of the Parent or any Subsidiary thereof (each an Assignee). Any such Assignee may thereafter assign, in its sole discretion and without the consent of any other party, any or all of its rights, interests, and obligations hereunder to one or more additional Assignees; provided, however, that (x) in no event will any assignment to an Assignee cause a material delay or impair the ability of the Parent and the Purchaser to consummate the Transactions and (y) in connection with any assignment to an Assignee, the Parent and the Purchaser (and the assignor, if applicable) shall agree to remain liable for the performance by the Parent and the Purchaser (and such assignor, if applicable) of their obligation hereunder.

Section 6.8 Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile or by an electronic scan delivered by electronic mail), each of which shall be an original, but each of which together shall constitute one and the same Agreement.

Section 6.9 Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed given when delivered in person, by overnight courier, by facsimile transmission (with receipt confirmed by telephone or by automatic transmission report) or by electronic mail, or two business days after being sent by registered or certified mail (postage prepaid, return receipt requested), as follows:

(a) if to the Parent or the Purchaser, to:

c/o Covidien

15 Hampshire Street

Mansfield, Massachusetts 02048

Attn:	Matthew Nicolella, Vice President Chief Mergers & Acquisitions Counsel
Email:	matthew.nicolella@covidien.com
Telephone:	(508) 261-8044
Facsimile:	(508) 261-8544

with a copy to:

Ropes & Gray LLP

One International Place

Boston, Massachusetts 02110

Attn:	Paul M. Kinsella
Email:	paul.kinsella@ropesgray.com
Telephone:	(617) 951-7921
Facsimile:	(617) 951-7050

(b) If to Stockholder, to the addresses indicated on Schedule I hereto.

Any party may by notice given in accordance with this Section 6.9 to the other parties designate updated information for notices hereunder.

Section 6.10 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the Laws of the State of Delaware, without regard to its principles of conflicts of Laws.

Section 6.11 Enforceability. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. Upon a determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible and, absent agreement among the parties, a court is authorized to so modify this Agreement.

Section 6.12 Further Assurances. From time to time, at the Parent s request and without further consideration, subject to the terms and conditions of this Agreement, Stockholder shall execute and deliver to the Parent such documents and take such action as the Parent may reasonably request in order to consummate more effectively the transactions contemplated hereby and to vest in the Parent good, valid and marketable title to the Shares.

Section 6.13 Remedies Not Exclusive. All rights, powers and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity will be cumulative and not alternative, and the exercise of any thereof by either party will not preclude the simultaneous or later exercise of any other such right, power or remedy by such party.

Section 6.14 Waiver of Jury Trial. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 6.15 No Agreement Until Executed. Irrespective of negotiations among the parties or the exchanging of drafts of this Agreement, this Agreement shall not constitute or be deemed to evidence a contract, agreement, arrangement or understanding between the parties hereto unless and until (a) the Company Board has approved, for purposes of any applicable anti-takeover laws and regulations, and any applicable provision of the Company s certificate of incorporation, the possible acquisition of the Shares by the Parent and the Purchaser pursuant to the Merger Agreement, (b) the Merger Agreement is executed by all parties thereto, and (c) this Agreement is executed by all parties hereto.

[The rest of this page has intentionally been left blank]

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

COVIDIEN GROUP S.A.R.L.

By:

Name:

Title:

COV DELAWARE CORPORATION

By:

Name:

Title:

STOCKHOLDER:

Name:

Exhibit 3

EXECUTION COPY

Morgan Stanley Senior Funding, Inc.

1585 Broadway

New York, New York 10036

June 1, 2010

Covidien plc

Covidien International Finance S.A.

15 Hampshire Street

Mansfield, MA 02048

Attention: Charles Dockendorff

Executive Vice President and Chief Financial Officer

Ladies and Gentlemen:

Commitment Letter

Covidien plc (Holdco) and Covidien International Finance S.A. (the Borrower , and together with Holdco, jointly and severally, you or the Company) have advised Morgan Stanley Senior Funding, Inc. (MSSF , we or us) that you intend (i) to commence, through a newly formed United States subsidiary (Merger Sub), a tender offer (as such tender offer may be amended, supplemented or otherwise modified from time to time, the Tender Offer) for all of the issued and outstanding shares of common stock of a company previously identified to us and codenamed Evan (the Target , and together with its subsidiaries, the Acquired Business) together with any related rights under any shareholder rights agreements (collectively, the Shares), including any Shares that may become outstanding upon the exercise of options or other rights to acquire Shares after the commencement of the Tender Offer but before the consummation of the Tender Offer (the date on which all conditions precedent to the consummation of the Tender Offer as set forth in the Acquisition Documents (as defined below) being referred to herein as the Effective Date), for a purchase price consisting of cash consideration set forth in the Offer to Purchase, the Letter of Transmittal and the Tender Offer Statement on Schedule TO relating to the Tender Offer (such documents, including all exhibits thereto and as they may be amended, supplemented or otherwise modified from time to time, are collectively referred to herein as the Tender Offer Documents), and (ii) promptly following the Effective Date, to effect a merger (the Merger , and together with the Tender Offer, the Acquisition) of Merger Sub with and into the Target, with the surviving corporation of the Merger being a wholly owned subsidiary of the Borrower, in each case pursuant to that certain Agreement and Plan of Merger to be entered into among Merger Sub, a direct or indirect parent thereof (the Parent) and the Target (including all annexes and exhibits thereto, as amended, modified and supplemented in accordance with the terms hereof, the Merger Agreement , and together with the Tender Offer Documents, the Acquisition Documents). After giving effect to the Acquisition, the Target will become a wholly-owned subsidiary of the Borrower.

In that connection, you have advised us that the total amount required to effect the Acquisition and to pay the fees and expenses incurred in connection therewith shall be provided by a combination of (i) cash on the balance sheet, (ii) the issuance of commercial paper and (iii) at the election of the Borrower, either (a) the issuance by it of unsecured notes (the Notes) in an aggregate amount up to $1.50 billion in gross proceeds, or (b) to the extent the Borrower does not issue the Notes on or prior to the Effective Date, the incurrence by the Borrower of a senior unsecured term loan facility in an aggregate amount not to exceed $1.25 billion (the Facility). The Acquisition, the Notes, the Facility and the related transactions contemplated by the foregoing are collectively referred to as the Transactions .

1. Commitment. MSSF is pleased to commit to provide 100% of the Facility subject to and on the terms and conditions set forth herein and in the Summary of Terms and Conditions attached hereto as Exhibit A (including Annex I and Annex II attached thereto, the "Term Sheet", and together with this letter, the "Commitment Letter"); provided that, if, after the date hereof and prior to the Effective Date, Holdco or any of its subsidiaries consummates any Applicable Equity/Debt Issuance or receives any Applicable Asset Sales Proceeds (each as respectively defined in the Term Sheet, provided that Working Capital Facilities entered into (as borrower or guarantor) by Holdco or the Borrower (whether or not funded to the extent available) shall be included in Applicable Debt/Equity Issuances for the purposes of this paragraph), then the aggregate amount of our commitment under the Facility shall automatically be reduced by an amount equal to the aggregate principal amount of any such Applicable Equity/Debt Issuance or Applicable Asset Sales Proceeds, as the case may be. It is understood that MSSF shall act as sole lead arranger and bookrunner (in such capacity, the "Arranger") and administrative agent for the Facility. You agree that no other agents, co-agents, arrangers or bookrunners will be appointed, no other titles will be awarded and no compensation (other than that expressly contemplated by this Commitment Letter and the Fee Letter referred to below) will be paid in connection with the Facility, unless you and we shall agree. It is further agreed MSSF will have left placement in all documentation used in connection with the Facility and shall have all roles and responsibilities customarily associated with such placement.

Our commitment and agreements hereunder are subject to the following:

(a) (x) there not occurring since September 25, 2009 any event, development or circumstance that has had or could reasonably be expected to have a material adverse effect on the consolidated financial condition, business or operations of Holdco and its subsidiaries taken as a whole, and (y) there not occurring and be continuing since the date hereof, an Acquired Business Material Adverse Effect. For the purposes hereof, "Acquired Business Material Adverse Effect" means any material adverse change in, or material adverse effect on, the business, financial condition or results of operations of the Target and its Subsidiaries (as defined in the Merger Agreement), taken as a whole; provided, however, that any change or effect resulting from (i) the industries and markets in which the Target and its Subsidiaries operate, (ii) the United States or the global economy or (iii) the United States financial or securities markets shall be excluded from the determination of Acquired Business Material Adverse Effect, in the case of clauses (i), (ii) and (iii), to the extent they have not had, or would reasonably be expected not to have, a materially disproportionate effect on the Target and its Subsidiaries relative to other companies in the same industry as the Target; and provided further that any change or effect resulting from the following, shall not constitute, and shall not be considered in determining whether there has occurred, an Acquired Business Material Adverse Effect: (1) the execution or announcement of the Merger Agreement, (2) natural disasters, acts of war, terrorism or sabotage, military actions or the escalation thereof or other *force majeure* events, (3) changes in GAAP or changes in the interpretation of GAAP, or changes in the accounting rules and regulations of the United States Securities and Exchange Commission (the "SEC"), (4) any enactment or other action required by Law (as defined in the Merger Agreement), required by the Merger Agreement or taken at the request of the Parent or the Merger Sub, (5) any litigation brought or threatened by stockholders of either the Parent or the Target (whether on behalf of the Target, the Parent or otherwise) asserting allegations of breach of fiduciary duty relating to the Merger Agreement or violations of securities Laws in connection with the Schedule 14D-9, the Proxy Statement (as defined in the Merger Agreement), if any, and each other document required to be filed by the Target with the SEC or required to be distributed or otherwise disseminated to all holders of Shares (as defined in the Merger Agreement) of the Target in connection with the Transactions (as defined in the Merger Agreement) (collectively, the "Acquired Business Disclosure Documents"), (6) any changes in Law (as defined in the Merger Agreement) or interpretations thereof (including any health reform statutes, rules or regulations or interpretations thereof), (7) any action required to comply with the rules and regulations of the SEC or the SEC comment process, in each case, in connection with any Acquired Business Disclosure Document, (8) any decrease in the market price or trading volume of common stock, par value, $0.01 per share, of the Target (but not the underlying cause of such decrease), (9) any failure by the Target to meet any projections, forecasts or revenue or earnings predictions, or any predictions or expectations of the Target or of any securities analysts (but not the underlying cause of such failure), or (10) any fluctuations in foreign currency exchange rates;

(b) the negotiation, execution and delivery on or before December 31, 2010 (the Commitment Termination Date) of definitive documentation for the Facility, which shall be consistent with the Term Sheet (the Credit Documentation); and

(c) the other conditions set forth in Section IV (Certain Conditions) of the Term Sheet and Annex II thereto.

It is understood that there are no conditions (implied or otherwise) to the commitments hereunder other than those that are expressly stated to be conditions to the commitments or initial funding under the Facility on the Effective Date (and upon satisfaction of such conditions, the initial funding under the Facility shall occur).

2. Syndication. We reserve the right, prior to or after execution of the Credit Documentation, to syndicate all or a part of our commitment to one or more financial institutions and/or lenders (collectively, the Lenders), which syndication may occur in two or more stages and shall be managed by the Arranger (in consultation with you); provided, however, that (notwithstanding the assignment provisions with respect to the Facility set forth in the Term Sheet) (a) until the date that is 75 days after the date hereof, the selection of Lenders shall be by the Arranger subject to the Borrower s approval in its sole discretion and (b) thereafter the selection of Lenders shall be by the Arranger in consultation with the Borrower; provided, further, that such Lenders selected by the Arranger pursuant to this clause (b) shall be limited (unless otherwise consented to by the Borrower, such consent not to be unreasonably withheld or delayed) to commercial and investment banks, in each case whose senior, unsecured, long-term indebtedness has an investment grade rating by not less than two of S&P, Moody s and Fitch (each as defined in the Term Sheet). Our commitment hereunder shall be reduced as and when commitments are received from such Lenders to the extent such other Lender becomes (i) a party to this Commitment Letter pursuant to a joinder or other documentation reasonably satisfactory to the Arranger and the Borrower or (ii) a party as a Lender to the Credit Documentation. We intend to commence syndication efforts promptly following execution of this Commitment Letter, and you agree to use your commercially reasonable efforts to actively assist the Arranger in completing a syndication reasonably satisfactory to it as soon thereafter as practicable until the date on which a Successful Syndication (as defined in the Fee Letter) is achieved. Such assistance shall include (a) your using commercially reasonable efforts to ensure that the Arranger s syndication efforts benefit materially from your existing lending and investment banking relationships, (b) direct contact between senior management and advisors of the Company, on the one hand, and the proposed Lenders, on the other hand, at times and locations to be mutually agreed, (c) your assistance in the preparation of a customary confidential information memorandum (a Confidential Information Memorandum) and other customary marketing materials to be used in connection with the syndication and (d) the hosting, with the Arranger, of one or more meetings or conference calls with prospective Lenders at times and locations to be mutually agreed. Until the date on which a Successful Syndication is achieved, (a) you agree that there shall be no competing offering, placement or arrangement of any debt securities (excluding commercial paper issuances and the issuance of the Notes and any notes issued to refinance existing notes maturing within 120 days of the issuance of such refinancing notes) or syndicated credit facilities by or on behalf of Holdco or any of its subsidiaries that would materially impair the primary syndication of the Facility (it being understood that any indebtedness expressly permitted to be incurred by the Acquired Business under the Merger Agreement as in effect on the date hereof shall not be subject to the restrictions in this clause (a)), and (b) you agree to use commercially reasonable efforts to promptly prepare and provide to us all customary information with respect to Holdco and its subsidiaries and the Transactions, including, without limitation, all financial information and projections (the Projections), as the Arranger may reasonably request. The Arranger will manage all aspects of the syndication in consultation with you (and to the extent provided above with respect to the selection of Lenders, subject to your consent), including, without limitation, decisions as to the selection of institutions to be approached and when they will be approached, when their commitments will be accepted, which institutions will participate, the allocations of the commitments among the Lenders and the amount and distribution of fees among the Lenders. In acting as the Arranger, MSSF will have no responsibility other than to arrange the syndication as set forth herein and shall in no event be subject to any fiduciary or other implied duties. Without limiting in any way your obligations to assist with the syndication efforts as set forth herein, neither the commencement nor the completion of the syndication of the Facility shall constitute a condition precedent to the initial funding under the

Facility on the Effective Date. MSSF and the Company agree to each use its commercially reasonable efforts to negotiate, execute and deliver the Credit Documentation promptly (and in any event within 60 days) following execution of this Commitment Letter, with the initial drafts thereof to be prepared by counsel to MSSF.

You agree that the Arranger may make available any Information (as defined below) and Projections (collectively, the Company Materials) to potential Lenders by posting the Company Materials on IntraLinks, the Internet or another similar electronic system (the Platform). You further agree to assist, at the request of the Arranger, in the preparation of a version of a confidential information memorandum and the other customary marketing materials and presentations to be used in connection with the syndication of the Facility, consisting exclusively of information or documentation that is either (a) publicly available or (b) not material with respect to Holdco, the Target or their respective subsidiaries or any of their respective securities for purposes of foreign (to the extent applicable), United States federal and state securities laws (all such information and documentation being Public Lender Information). Any information and documentation that is not Public Lender Information is referred to herein as Private Lender Information. You further agree that each document to be disseminated by the Arranger to any Lender or potential Lender in connection with the syndication of the Facility will be identified by you as either (i) containing Private Lender Information or (ii) containing solely Public Lender Information. You acknowledge that the following documents will contain solely Public Lender Information: (i) drafts and final definitive documentation with respect to the Facility; (ii) administrative materials prepared by the Arranger for potential Lenders (e.g. a lender meeting invitation, allocation and/or funding and closing memoranda); and (iii) notification of changes in the terms of the Facility.

3. Information. You hereby represent and covenant that (to the best of your knowledge with respect to the Acquired Business) (a) all written information (other than the Projections and information of a general economic or general industry nature) (the Information) that has been or will be made available to MSSF or any of its affiliates or any Lender or potential Lender by you, the Acquired Business or any of your or its representatives is or will be, when furnished, taken as a whole, correct in all material respects and does not or will not, when furnished, taken as a whole, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein not misleading in light of the circumstances under which such statements are made (after giving effect to all supplements and updates thereto) and (b) the Projections that have been or will be made available to MSSF or any of its affiliates or any Lender or potential Lender by you or any of your representatives have been or will be prepared in good faith based upon assumptions believed by you to be reasonable at the time made (it being understood that the Projections are subject to significant uncertainties and contingencies, many of which are beyond your control, that no assurance can be given that any particular Projection will be realized, that actual results may differ and that such differences may be material). You agree that if at any time prior to the Effective Date any of the representations in the immediately preceding sentence would be incorrect if the Information and Projections were being furnished, and such representations were being made, at such time, then you will promptly supplement the Information and Projections from time to time until the Effective Date so that such representations will be correct under those circumstances. You acknowledge that we will be entitled to use and rely on the Information and Projections without independent verification thereof.

We reserve the right to employ the services of one or more of our affiliates in providing services contemplated by this Commitment Letter and to allocate, in whole or in part, to such affiliates certain fees payable to us in such manner as we and our affiliates may agree. You acknowledge that MSSF may share with any of its affiliates, and such affiliates may share with MSSF, any information related to the Transactions, you and your subsidiaries or the Acquired Business or any of the matters contemplated hereby in connection with the Transactions, in each case, subject to the confidentiality obligations in Section 8 hereof.

4. Fees and Expenses. As consideration for MSSF s commitment hereunder and MSSF s agreement to perform the services described herein, you agree to pay the non-refundable fees set forth in Annex I to the Term Sheet and in the Fee Letter dated the date hereof being delivered herewith (the Fee Letter).

5. Indemnity. You agree (a) to indemnify and hold harmless MSSF and its affiliates and each officer, director, employee, advisor and agent of MSSF or its affiliates (each, an indemnified person) from and against any and all losses, claims, damages and liabilities to which any such indemnified person may become subject arising out of or in connection with this Commitment Letter, the Fee Letter, the Facility, the use of the proceeds thereof, the Transactions or any claim, litigation, investigation or proceeding relating to any of the foregoing, regardless of whether any indemnified person is a party thereto, and to reimburse each indemnified person within 30 days after receipt of a written request together with reasonably detailed backup documentation for any reasonable legal or other reasonable out-of-pocket expenses incurred in connection with investigating or defending any of the foregoing, provided that the foregoing indemnity will not, as to any indemnified person, apply to losses, claims, damages, liabilities or related expenses to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction (i) to arise from the willful misconduct or gross negligence of, or material breach of its express obligations set forth in this Commitment Letter, the Fee Letter or the Credit Documentation by, such indemnified person or (ii) to have resulted from a dispute solely among the indemnified persons that does not arise from the Company s breach of its express obligations under this Commitment Letter, the Fee Letter or the Credit Documentation, the use of the proceeds thereof, the Transactions or any related transaction, and (b) without duplication of any expenses reimbursed pursuant to the Credit Documentation, to reimburse MSSF and its affiliates, upon presentation of a summary statement, together with any supporting documentation reasonably requested by you, for all reasonable out-of-pocket expenses (including, without limitation, reasonable fees, charges and disbursements of counsel to MSSF identified in the Term Sheet (except in the event of an actual or potential conflict of interest among MSSF and the Lenders) and if reasonably required by MSSF, of one local counsel and one specialist counsel with respect to any applicable jurisdiction or specialization) incurred in connection with the Facility and any related documentation (including, without limitation, this Commitment Letter, the Fee Letter and the Credit Documentation) or the administration, amendment, modification or waiver thereof. No indemnified person shall be liable for any damages arising from the use by unintended recipients of Information or other materials obtained through electronic, telecommunications or other information transmission systems. Without limiting in any way your reimbursement or indemnification obligations under this Commitment Letter or in the Credit Documentation, no party hereto, or any of its affiliates or controlling persons, or any of the respective officers, directors, employees, successors or assigns of any of the foregoing shall be liable for any special, indirect, consequential or punitive damages in connection with the Facility. Any indemnified person that proposes to settle or compromise any claim, litigation, investigation or proceeding for which you may be liable for payment of indemnity hereunder shall give you written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain your prior written consent (not to be unreasonably withheld).

You acknowledge that MSSF and its affiliates (the term MSSF as used below in this paragraph being understood to include such affiliates) may be providing debt financing, equity capital or other services (including, without limitation, financial advisory services) to other companies in respect of which you may have conflicting interests regarding the transactions described hereby and otherwise. In particular, you acknowledge that Morgan Stanley & Co. Incorporated (MS&Co.) is acting as a buy-side financial advisor to you in connection with the Transactions. You agree not to assert or allege any claim based on actual or potential conflict of interest arising or resulting from, on the one hand, the engagement of MS&Co. in such capacity and our obligations hereunder, on the other hand. MSSF will not use confidential information obtained from you by virtue of the transactions contemplated hereby or other relationships with you in connection with the performance by MSSF of services for other companies, and MSSF will not furnish any such information to other companies. You also acknowledge that MSSF has no obligation to use in connection with the transactions contemplated hereby, or to furnish to you, confidential information obtained from other companies. You acknowledge that MSSF is acting pursuant to a contractual relationship on an arm s length basis, and the parties hereto do not intend that MSSF act or be responsible as a fiduciary to the Company, its management, stockholders, creditors or any other person. The Company hereby expressly disclaims any fiduciary relationship and agrees that it is responsible for making its own independent judgments with respect to any transactions entered into between it and MSSF. The Company also acknowledges that MSSF has not advised and is not

advising the Company as to any legal, accounting, regulatory or tax matters, and that the Company is consulting its own advisors concerning such matters to the extent it deems appropriate.

6. Governing Law, etc. This Commitment Letter shall be governed by, and construed in accordance with, the law of the State of New York; provided, that it is understood and agreed that whether there shall have occurred an Acquired Business Material Adverse Effect shall be governed by, and construed in accordance with, the laws of the State of Delaware without regard to conflict of law principles that would result in the application of any law other than the law of the State of Delaware. The parties hereto hereby waive any right they may have to a trial by jury with respect to any claim, action, suit or proceeding arising out of or contemplated by this Commitment Letter. The parties hereto submit to the exclusive jurisdiction of the federal and New York State courts located in the City of New York in connection with any dispute related to, contemplated by, or arising out of this Commitment Letter and agree that any service of process, summons, notice or document by registered mail addressed to such party shall be effective service of process for any suit, action or proceeding relating to any such dispute. The parties hereto irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding brought in any such court and agree that any final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and may be enforced in other jurisdictions by suit upon the judgment or in any other manner provided by law.

7. PATRIOT Act. MSSF hereby notifies you that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (October 26, 2001), as amended) (the "PATRIOT Act"), it and the other Lenders may be required to obtain, verify and record information that identifies you, which information includes your name and address, and other information that will allow MSSF and the other Lenders to identify you in accordance with the PATRIOT Act. This notice is given in accordance with the requirements of the PATRIOT Act and is effective for each of MSSF and the other Lenders.

8. Confidentiality. This Commitment Letter is delivered to you on the understanding that neither this Commitment Letter or the Fee Letter nor any of their terms or substance shall be disclosed, directly or indirectly, to any other person except (a) to your officers, directors, employees, stockholders, partners, members, accountants, attorneys, agents and advisors who are directly involved in the consideration of this matter on a confidential and need-to-know basis, (b) as may be compelled in a judicial or administrative proceeding or as otherwise required by law or requested by a governmental authority (in which case you agree to the extent permitted under applicable law to inform us promptly thereof), (c) this Commitment Letter (but not the Fee Letter or the contents thereof, unless redacted in a form approved by MSSF (such approval not to be unreasonably withheld)) may be disclosed to the Acquired Business and its officers, directors, employees, accountants, attorneys, agents and advisors who are directly involved in the consideration of this matter on a confidential and need-to-know basis or (d) after your acceptance of this Commitment Letter and the Fee Letter, you may disclose the Commitment Letter, but not the Fee Letter, in such filings as the Company may determine is advisable to comply with the requirements of the SEC and other applicable regulatory authorities and stock exchanges.

MSSF shall use all nonpublic information received by us from you or on your behalf in connection with the Transactions solely for purpose of providing the services that are the subject of this Commitment Letter and the transactions contemplated hereby and shall treat confidentially all such information; provided, however, that nothing herein shall prevent MSSF from disclosing any such information (a) to any Lenders or participants or prospective Lenders or participants and any direct or indirect contractual counterparties to any swap or derivative transaction relating to the Company or its obligations under the Facility (collectively, "Specified Counterparties"), (b) in any legal, judicial, administrative proceeding or other process or otherwise as required by applicable law or regulations (in which case MSSF shall promptly notify you, in advance, to the extent permitted by law), (c) upon the request or demand of any regulatory authority having jurisdiction over MSSF or its affiliates (in which case MSSF shall, except with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority,

promptly notify you, in advance, to the extent lawfully permitted to do so), (d) to the employees, legal counsel, independent auditors, professionals and other experts or agents of MSSF (collectively, the Representatives) who are informed of the confidential nature of such information and of their obligation to keep information of this type confidential, (e) to any of its respective affiliates solely in connection with the Transactions (provided that such information shall be provided on confidential basis, and MSSF shall be responsible for its affiliates compliance with this paragraph), (f) to the extent any such information becomes publicly available other than by reason of disclosure by MSSF, its affiliates or Representatives in breach of this Commitment Letter and (g) for purposes of establishing a due diligence or other similar defense; provided that the disclosure of any such information to any Lenders or prospective Lenders or participants or prospective participants or Specified Counterparties referred to above shall be made subject to the acknowledgment and acceptance by such Lender or prospective Lender or participant or prospective participant or Specified Counterparty that such information is being disseminated on a confidential basis in accordance with the standard syndication processes of MSSF or customary market standards for dissemination of such types of information. The obligations of MSSF under this paragraph shall remain in effect until the earlier of (i) one year from the date hereof and (ii) the Effective Date, at which time any confidentiality undertaking in the Credit Documentation shall supersede the provisions of this paragraph.

9. Miscellaneous. This Commitment Letter shall not be assignable by (i) you without our prior written consent, or (ii) except as set forth in Section 2 above, us without your prior written consent (and in each case, any purported assignment without such consent shall be null and void), is intended to be solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto and the indemnified persons. Subject to the applicable limitations set forth in Section 2 above, we may assign our commitments and agreements hereunder, in whole or in part, to any of our respective affiliates (provided that any such assignment to an affiliate shall not relieve MSSF of its obligations to fund such assigned portion of its commitments hereunder unless such assignment was approved by you). This Commitment Letter may not be amended or waived except by an instrument in writing signed by you and us. This Commitment Letter may not be amended or waived except by an instrument in writing signed by you and us. This Commitment Letter may be executed in any number of counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one agreement. Delivery of an executed signature page of this Commitment Letter by electronic transmission shall be effective as delivery of a manually executed counterpart hereof. This Commitment Letter and the Fee Letter are the only agreements that have been entered into among us with respect to the Facility and set forth the entire understanding of the parties with respect thereto. No individual has been authorized by MSSF or its affiliates to make any oral or written statements that are inconsistent with this Commitment Letter or the Fee Letter.

The compensation, reimbursement, indemnification, confidentiality, syndication, clear market, jurisdiction, venue and governing law provisions contained herein and in the Fee Letter shall remain in full force and effect regardless of whether the Credit Documentation shall be executed and delivered and notwithstanding the termination of this Commitment Letter or our commitments hereunder; provided, that your obligations hereunder with respect to syndication, confidentiality and indemnification shall automatically terminate and be superseded by the provisions of the Credit Documentation upon the effectiveness thereof. You may terminate our commitments hereunder at any time subject to the provisions of the immediately preceding sentence.

If the foregoing correctly sets forth our agreement, please indicate your acceptance of the terms hereof and of the Term Sheet and the Fee Letter by returning to us executed counterparts hereof and of the Fee Letter not later than 5:00 p.m. (New York City time), on the date of this Commitment Letter. After your execution and delivery to us of this Commitment Letter and the Fee Letter, our commitment in this Commitment Letter shall automatically terminate upon the earliest to occur of (i) the execution and delivery of Credit Documentation by all parties thereto, (ii) the consummation of the Acquisition without the execution and delivery of Credit Documentation by all parties thereto; provided, that termination pursuant to this clause (ii) shall not prejudice your rights and remedies in respect of any breach of the Commitment Letter that occurred on or prior to any such termination, (iii) the Commitment Termination Date and (iv) the date of termination by you of either the Merger Agreement or the Tender Offer.

We are pleased to have been given the opportunity to assist you in connection with this important financing.

Very truly yours,

MORGAN STANLEY SENIOR FUNDING, INC.

By: /s/ ANISH M. SHAH
Name: **Anish M. Shah**
Title: Vice President

Accepted and agreed to as of the date first written above by:

COVIDIEN PLC

By: /s/ CHARLES J. DOCKENDORFF
Name: **Charles J. Dockendorff**
Title: Executive Vice President and Chief Financial Officer

COVIDIEN INTERNATIONAL FINANCE S.A.

By: /s/ MICHELANGELO F. STEFANI

Name: **Michelangelo F. Stefani**
Title: Managing Director

[SIGNATURE PAGE TO COMMITMENT LETTER]

Exhibit A

COVIDIEN INTERNATIONAL FINANCE S.A.

SENIOR UNSECURED 364-DAY TERM LOAN FACILITY

Summary of Terms and Conditions

June 1, 2010

I. PARTIES

Borrower:	Covidien International Finance S.A., a Luxembourg company (the "Borrower").
Guarantors:	Covidien Ltd., a Bermuda company ("Covidien Ltd."), and Covidien plc, an Irish company ("Holdco", and together with Covidien Ltd., the "Guarantors"), will each, jointly and severally, unconditionally guarantee all obligations of the Borrower under the Facility.
Sole Lead Arranger and Sole Bookrunner:	Morgan Stanley Senior Funding, Inc. ("MSSF") will act as sole lead arranger and sole bookrunner for the Facility (in such capacities, the "Arranger").
Administrative Agent:	MSSF will act as the sole and exclusive administrative agent for the Facility (in such capacity, the "Administrative Agent").
Lenders:	A syndicate of banks, financial institutions and other entities, including MSSF or an affiliate thereof, arranged by the Arranger (collectively, the "Lenders").

II. THE FACILITY

Type and Amount of Facility:	364-day senior unsecured term loan facility in the amount of $1.25 billion (the loans thereunder, the "Loans").
Availability:	The Loans shall be made in up to three drawings, commencing on the consummation of the Tender Offer (the "Effective Date") and ending on the earlier of (i) the date that is 90 days following the Effective Date and (ii) the date of the consummation of the Merger (such earlier date, the "Availability Termination Date") and the date of each drawing during such period, including the Effective Date and the Availability Termination Date, a "Funding Date")), and any undrawn commitments under the Facility (the "Commitments") shall automatically be terminated on the Availability Termination Date.
Maturity:	The Loans shall mature and be payable in full on the date that is 364 days after the Effective Date.

Purpose:	The proceeds of the Loans shall be used to finance the Transactions.

III. CERTAIN PAYMENT PROVISIONS

Fees and Interest Rates:	As set forth on Annex I.
Optional Prepayments:	The Loans may be prepaid at par by the Borrower without premium or penalty (other than the payment of customary LIBO Rate breakage amounts) in minimum amounts to be agreed upon. Loans prepaid may not be reborrowed.

Mandatory Prepayments: The following amounts shall be applied first to repay any Loans outstanding and thereafter, to automatically and permanently reduce any remaining Commitments:

(a) 100% of the net proceeds of any sale or issuance of equity or issuance of debt securities or incurrence of indebtedness (other than proceeds received from (i) borrowings under existing syndicated credit facility commitments, (ii) commercial paper issuances, (iii) any refinancing of any existing indebtedness (other than (A) bilateral credit facilities in excess of $50 million in aggregate and (B) syndicated credit facilities) of Holdco or any of its subsidiaries to the extent the maturity date of such refinanced indebtedness is no more than 120 days from the date of such refinancing, (iv) any bilateral credit facilities not exceeding $200 million in aggregate entered into for working capital purposes or otherwise in the ordinary course of business (Working Capital Facilities), (v) any equity issuance pursuant to director or employee stock or option plans and similar arrangements, (vi) any equity issued as consideration for an acquisition or investment, which issuance does not result in cash proceeds and (vii) certain other customary exceptions to be agreed), or the committed amount of any new syndicated credit facilities incurred (including the amount by which any such existing commitments under the Borrower s existing syndicated credit facilities is increased) by Holdco or any of its subsidiaries (the foregoing are collectively referred to as Applicable Equity/Debt Issuances); and

(b) 100% of the net proceeds of any sale or other disposition (including as a result of casualty or condemnation) by Holdco or any of its subsidiaries of any assets (except for the sale of inventory in the ordinary course of business and certain other dispositions to be agreed on) provided, that no such proceeds shall be required to be applied to repay any Loans or reduce any commitments as described above unless they exceed $50 million for any individual transaction or series of related transactions or $150 million in the aggregate following the date of the Commitment Letter (such proceeds, to the extent not reinvested within 270 days following receipt, are collectively referred to as Applicable Asset Sales Proceeds).

Amounts prepaid pursuant to any mandatory prepayment of the Loans may not be reborrowed.

IV. CERTAIN CONDITIONS

Initial Conditions: The making of the initial Loans (it being understood and agreed that such initial Loans may be in an aggregate principal amount of up to $1.25 billion) on or after the Effective Date shall be conditioned solely upon (a) the satisfaction of the conditions set forth in the Commitment Letter and Annex II, and (b) the accuracy of the representations and warranties in the Credit Documentation in all material respects; it being understood that the Credit Documentation shall not contain any representations and warranties relating to the

	Acquired Business other than such representations and warranties that relate to the consolidated operations of Holdco or the Borrower (after giving effect to consummation of the Tender Offer) or any of their respective subsidiaries generally, and (b) there being no default or event of default in existence at the time of, or after giving effect to the making of, such extension of credit.
On-Going Conditions:	The making of the Loans on each Funding Date after the Effective Date shall be conditioned solely upon (a) the accuracy in all material respects of the representations and warranties in the Credit Documentation (other than the material adverse change and litigation representations and warranties, which shall be made only on, and effective only with respect to Loans made on, the Effective Date), (b) there being no default or event of default in existence at the time of, or after giving effect to the making of, such extension of credit and (c) delivery of a customary borrowing notice.

V. CERTAIN DOCUMENTATION MATTERS

Credit Documentation:	The Credit Documentation shall be negotiated in good faith, shall contain the terms and conditions set forth in this Term Sheet and otherwise shall be substantially the same in all material respects (to the extent applicable) as the Borrower s existing amended and restated five-year senior credit agreement dated as of June 4, 2009, among the Borrower, the Guarantors, Citibank, N.A., as administrative agent and the lenders and agents party thereto (the Existing Credit Agreement).
Representations and Warranties, Covenants and Events of Default:	The Credit Documentation shall contain representations, warranties (including solvency of the Borrower and the Guarantors on a consolidated basis on the Effective Date after giving pro forma effect to the Acquisition), covenants and events of default that are substantially the same (to the extent applicable) as those included in the Existing Credit Agreement.
Financial Covenant:	Consolidated total debt to consolidated EBITDA not to be greater than 3.50:1, calculated on substantially the same basis as set forth in the Existing Credit Agreement.
Voting:	Amendments and waivers with respect to the Credit Documentation shall require the approval of Lenders holding not less than a majority of the aggregate amount of the Loans (the Required Lenders), except that (a) the consent of each Lender directly affected thereby shall be required with respect to (i) reductions in the amount or extensions of the scheduled date of final maturity of any Loan, (ii) reductions in the rate of interest or any fee or extensions of any due date thereof, (iii) increases in the amount or extensions of the expiry date of any Lender s commitment and (iv) modifications to the pro rata provisions of the Credit Documentation and (b) the consent of 100% of the Lenders shall be required with respect to (i) modifications to any of the voting percentages and (ii) releases of either Guarantor from its guarantee.

Defaulting Lender:	The Credit Documentation to contain Defaulting Lender provisions substantially the same in all material respects as those included in the Existing Credit Agreement.
Assignments and Participations:	The Lenders shall be permitted to assign all or a portion of their loans and commitments with the prior written consent of (a) the Borrower, which consent may not be unreasonably withheld (provided, however, that until and including the Effective Date, the Borrower may withhold its consent in its sole discretion in respect of all assignments), unless (i) the assignee is a Lender, an affiliate of a Lender or an approved fund or (ii) a payment or bankruptcy Event of Default has occurred and is continuing; and (b) the Administrative Agent, which consent may not be unreasonably withheld, unless a Loan is being assigned to an existing Lender, an affiliate thereof or an approved fund. In the case of partial assignments (other than to another Lender or to an affiliate of a Lender), the minimum assignment amount shall be $1,000,000, unless otherwise agreed by the Borrower and the Administrative Agent.

The Lenders shall also be permitted to sell participations in their loans. Participants shall have the same (but no greater) benefits as the Lenders with respect to yield protection and increased cost provisions. Voting rights of participants shall be limited to those matters with respect to which the affirmative vote of the specific Lender from which it purchased its participation would be required as described under Voting above.

Pledges of loans in accordance with applicable law shall be permitted without restriction. Promissory notes shall be issued under the Facility only upon request.

Yield Protection:	The Credit Documentation shall contain customary provisions consistent with the Existing Credit Agreement (a) protecting the Lenders against increased costs or loss of yield resulting from changes in reserve, tax, capital adequacy and other requirements of law and from the imposition of or changes in withholding or other taxes and (b) indemnifying the Lenders for breakage costs incurred in connection with any prepayment of a LIBOR Loan (as defined in Annex I) on a day other than the last day of an interest period with respect thereto, any failure to borrow a LIBOR Loan on the requested date or in the other circumstances set forth in the Existing Credit Agreement.
Expenses and Indemnification:	The Borrower shall pay (a) all reasonable out-of-pocket expenses of the Administrative Agent and the Arranger associated with the syndication of the Facility and the preparation, execution, delivery and administration of the Credit Documentation and any amendment or waiver with respect thereto (including, without limitation, the reasonable fees, disbursements and other charges of one counsel to the Administrative Agent and the Lenders taken as a whole (except in the event of an actual or potential conflict of interest among the Administrative Agent and the Lenders) and, if reasonably required by the Administrative Agent, of one local counsel and one specialist

counsel for any applicable jurisdiction or specialization) and (b) all out-of-pocket expenses of the Administrative Agent and the Lenders (including, without limitation, the fees, disbursements and other charges of counsel) in connection with the enforcement of the Credit Documentation.

The Administrative Agent, the Arranger and the Lenders (and their affiliates and their respective officers, directors, employees, advisors and agents) will have no liability for, and will be indemnified and held harmless against, any loss, liability, cost or expense incurred in respect of the financing contemplated hereby or the use or the proposed use of proceeds thereof (except to the extent found by a final, non-appealable judgment of a court (x) to arise from the gross negligence or willful misconduct of the indemnified party, (y) resulting from a breach of the confidentiality provisions in the Credit Documentation by the indemnified party or (z) arising from a dispute solely among the Lenders that does not arise from the Borrower s or any of its subsidiary s breach of the Credit Documentation.

Governing Law and Forum: State of New York.

Counsel to the Administrative Agent and the Arranger: Weil, Gotshal & Manges LLP.

Annex I

INTEREST AND CERTAIN FEES

Interest Rate Options: The Borrower may elect that the Loans bear interest at a rate per annum equal to:
the ABR plus the Applicable Margin; or

the Adjusted LIBO Rate plus the Applicable Margin.

As used herein:

"ABR" means, for any day, a fluctuating rate per annum equal to the highest of (i) the federal funds effective rate from time to time plus 1/2 of 1.00%, (ii) the rate of interest per annum from time to time published in the "Money Rates" section of The Wall Street Journal as being the "Prime Lending Rate" or, if more than one rate is published as the Prime Lending Rate, then the highest of such rates (each change in the Prime Lending Rate to be effective as of the date of publication in The Wall Street Journal of a "Prime Lending Rate" that is different from that published on the preceding domestic business day); provided, that, in the event that The Wall Street Journal shall, for any reason, fail or cease to publish the Prime Lending Rate, the Administrative Agent (acting in a commercially reasonable manner and in good faith) shall choose a reasonably comparable index or source to use as the basis for the Prime Lending Rate and (iii) the one month Adjusted LIBO Rate plus 1.00%. Each change in any interest rate provided for herein based upon the ABR resulting from a change in the Prime Lending Rate and the federal funds effective rate shall take effect at the time of such change in the Prime Lending Rate and federal funds effective rate, respectively.

"Adjusted LIBO Rate" means the LIBO Rate, as adjusted for statutory reserve requirements for eurocurrency liabilities (if any).

"Applicable Margin" means a percentage determined in accordance with the pricing grid attached hereto as Annex I-A (the "Pricing Grid"); provided, that, (i) on the date that is 90 days following the Effective Date, the interest rate then in effect shall increase by an additional 25 basis points per annum, (ii) on the date that is 180 days following the Effective Date, the interest rate then in effect shall increase by an additional 25 basis points per annum and (iii) on the date that is 270 days following the Effective Date, the interest rate then in effect shall increase by an additional 50 basis points per annum.

"LIBO Rate" means the rate for eurodollar deposits in the London interbank market for a period of one, two, three or six months, in each case as selected by the Borrower, appearing on Page LIBOR01 of the Reuters screen.

Interest Payment Dates: In the case of loans bearing interest based upon the ABR ("ABR Loans"), quarterly in arrears.
In the case of loans bearing interest based upon the Adjusted LIBO Rate ("LIBOR Loans"), on the last day of each relevant interest period and, in the case of any interest period longer than three

months, on each successive date three months after the first day of such interest period.

Commitment Fees: The Borrower shall pay, or cause to be paid, commitment ticking fees (the "Commitment Fees") to each Lender calculated at a rate per annum determined in accordance with the Pricing Grid on the aggregate amount of the undrawn Commitments, accruing during the period commencing on the Effective Date for the Facility and ending on the earlier of the date on which (x) there are no remaining undrawn Commitments under the Facility or (y) all remaining undrawn Commitments have been terminated pursuant to the Credit Documentation and payable quarterly in arrears and on such earlier date.

Duration Fees: The Borrower shall pay, or cause to be paid, duration fees (the "Duration Fees") for the account of each Lender in amounts equal to the following:

a) 0.50% of the principal amount of the Loan of such Lender outstanding at the close of business, New York time, on the date that is 90 days following the Effective Date, payable on such date;

b) 1.00% of the principal amount of the Loan of such Lender outstanding at the close of business, New York time, on the date that is 180 days following the Effective Date, payable on such date; and

c) 1.50% of the principal amount of the Loan of such Lender outstanding at the close of business, New York time, on the date that is 270 days following the Effective Date, payable on such date.

Default Rate: At any time upon the occurrence and during the continuation of any payment default, all overdue principal of any Loan shall bear interest at 2% above the rate otherwise applicable thereto. Overdue interest, fees and other amounts shall bear interest at 2% above the rate applicable to ABR Loans.

Rate and Fee Basis: All per annum rates shall be calculated on the basis of a year of 360 days (or 365/366 days, in the case of ABR Loans the interest rate payable on which is then based on the Prime Rate) for actual days elapsed.

Annex I-A

COVIDIEN INTERNATIONAL FINANCE S.A.

Pricing Grid

Index Debt Rating Level	**Applicable Margin**		
(S&P, Moody s or Fitch)	**ABR Loans**	**LIBOR Loans**	**Commitment Fee Rate**
³ A /A2 /A	50 bps	150 bps	20 bps
³ A- /A3 /A-	75 bps	175 bps	25 bps
³ BBB+ / Baa1 /BBB+	100 bps	200 bps	30 bps
£ BBB / Baa2 /BBB	150 bps	250 bps	37.5 bps

As used herein, Index Debt means senior, unsecured, long-term indebtedness for borrowed money of the Borrower that is not guaranteed by any other person other than the Guarantors or subject to any other credit enhancement.

In the event that the ratings from Standard & Poor Ratings Services (S&P), Moody s Investor Service, Inc. (Moody s) or Fitch, Inc. (Fitch) fall within different levels, then (i) if two of the ratings are at the same level and the other rating is one level higher or one level lower than the same two ratings, then the Applicable Margin and Commitment Fee Rate will be based on the two ratings at the same level, (ii) if two of the ratings are at the same level and the other rating is two or more levels above the two same ratings, then the Applicable Margin and Commitment Fee Rate will be based on the rating that is one level above the two same ratings, (iii) if two of the ratings are at the same level and the other rating is two or more levels below the two same ratings, then the Applicable Margin and Commitment Fee Rate will be based on the rating that is one level below the two same ratings and (iv) if each of the three ratings fall within different levels, then the Applicable Margin and the Commitment Fee Rate will be determined based on the rating level that is in between the highest and the lowest ratings.

If, at any time, a rating of the Index Debt is available from only two of S&P, Moody s and Fitch, then the Applicable Margin and the Commitment Fee Rate shall be based on the ratings available from such two rating agencies. If the immediately preceding sentence is applicable and the two available ratings referred to in such preceding sentence fall within different levels, the Applicable Margin and the Commitment Fee Rate shall be determined based on the higher rating and if the ratings differ by more than one level, the Applicable Margin and the Commitment Fee Rate shall be determined based on the rating one level lower than the higher rating. If, at any time, a rating of the Index Debt is available from only one of or none of S&P, Moody s, Fitch or any other nationally recognized statistical rating organization designated by the Borrower and approved in writing by the Required Lenders (an Approved Agency), then the Applicable Margin and the Commitment Fee Rate for each period commencing during the 30 days following the time there ceased to be at least two such ratings available, shall be the Applicable Margin and the Commitment Fee Rate in effect immediately prior to such cessation. Thereafter, the rating to be used until ratings from at least two of S&P, Moody s, Fitch or such other Approved Agency become available shall be as agreed between the Borrower and the Required Lenders, and the Borrower and the Required Lenders shall use good faith efforts to reach such agreement within such 30-day period; provided, however, that if no such agreement is reached within such 30-day period, then the Applicable Margin and the Commitment Fee Rate thereafter until such agreement is reached, shall be (a) if any such rating has become unavailable as a result of S&P, Moody s, Fitch or any other Approved Agency ceasing its business as a rating agency, the Applicable Margin and the Commitment Fee Rate, in effect immediately prior to such cessation, or (b) otherwise, the Applicable Margin and the Commitment Fee Rate as set forth opposite the Index Debt Rating Level (£ BBB /Baa2 /BBB) on the Pricing Grid.

Annex II

CONDITIONS PRECEDENT TO EFFECTIVE DATE

The initial extension of credit under the Facility shall be conditioned upon satisfaction of the following conditions precedent on or before the Commitment Termination Date (with references to the Holdco and its subsidiaries in this Annex II being deemed to refer to and include the Acquired Business after giving effect to the Transactions):

1. (i) All of the conditions precedent to the consummation of the Tender Offer shall have been satisfied in accordance with the Tender Offer Documents (which shall be reasonably satisfactory to the Arranger) and the Merger Agreement as in effect on the date hereof and (ii) no provision of any Acquisition Document shall have been waived, amended, supplemented or otherwise modified in an manner materially adverse to the interests of the Lenders (without the prior written consent of the Arranger).

2. The Lenders shall have received (i) audited consolidated financial statements of Holdco and the Acquired Business for the three most recent fiscal years ended at least 90 days prior to the Effective Date and (ii) unaudited interim consolidated financial statements of Holdco and the Acquired Business for each of the first three quarterly periods subsequent to the date of the latest financial statements delivered pursuant to clause (i) of this paragraph 2 and ended at least 45 days prior to the Effective Date.

3. The Administrative Agent and the Arranger shall have received all fees required to be paid on, and all expenses for which invoices have been presented at least one business day prior to, the Effective Date.

4. The Lenders shall have received the following: (a) customary legal opinions from (i) counsel to the Borrower and (ii) local counsel to Holdco, (b) customary resolutions and other evidence of authority, (c) customary officers certificates, (d) good standing certificates (to the extent applicable) in the jurisdiction of organization of the Borrower and the Guarantors, (e) a customary certificate from the chief financial officer of Holdco with respect to the solvency (on a consolidated basis) of Holdco and its subsidiaries as of the Effective Date, (f) if requested by any Lender at least two business days prior to the Effective Date, a promissory note of the Borrower, (g) a borrowing notice and (h) all documentation and other information reasonably requested by the Arranger or any Lender under applicable know your customer and anti-money laundering rules and regulations, including the PATRIOT Act. Each of the documents referred to in the foregoing clauses (a), (b), (c), (e) and (g) shall be in form and substance reasonably satisfactory to the Arranger.

5. There shall exist no injunction or other form of temporary restraining order with respect to the financing for the Acquisition.

6. The Arranger shall have received confirmation that not less than two of the following ratings shall have been obtained with respect to the Index Debt: (i) at least BBB- by S&P, (ii) at least Baa3 by Moody s and (iii) at least BBB- from Fitch, in each case with a stable or better outlook, which ratings and outlooks shall have been reaffirmed within 30 days prior to the Effective Date.

EXECUTION COPY

Morgan Stanley Senior Funding, Inc.

1585 Broadway

New York, NY 10036

Covidien plc

Covidien International Finance S.A.

15 Hampshire Street

Mansfield, MA 02048

June 11, 2010

Ladies and Gentlemen:

Joinder Agreement to Commitment Letter

Reference is made to the Commitment Letter dated June 1, 2010 (together with the exhibits and annexes attached thereto, the Commitment Letter) among Morgan Stanley Senior Funding, Inc. (MSSF), Covidien plc (Holdco) and Covidien International Finance S.A. (the Borrower , and together with Holdco, jointly and severally, the Company). Capitalized terms used but not defined herein are used with the meanings assigned to them in the Commitment Letter. This Joinder Agreement to Commitment Letter (this Joinder Agreement) sets forth the understanding of the parties hereto regarding the participation of each party identified on the signature pages hereof as an Additional Commitment Party (collectively, the Additional Commitment Parties and together with MSSF, the Commitment Parties) in the financing of the Facility.

Each Additional Commitment Party hereby commits, on a several but not joint basis, in each case on the same terms and conditions as are applicable to MSSF s commitments in respect of the Facility under the Commitment Letter (each such commitment of a Commitment Party, its Commitment , and collectively, the Commitments), in the principal amount set forth opposite such Additional Commitment Party s name on Schedule I attached hereto (Schedule I). Each Additional Commitment Party shall be deemed to be a party to the Commitment Letter as a Commitment Party in accordance with, and to the extent set forth in, this Joinder Agreement. The Commitments of MSSF under the Commitment Letter shall be reduced dollar for dollar by the aggregate amount of the Commitments of the Additional Commitment Parties upon execution of this Joinder Agreement by each of the parties hereto, such that, as of the date of this Joinder Agreement, the Commitment of each Commitment Party is as set forth on Schedule I.

In connection with each Additional Commitment Party s Commitment under this Joinder Agreement, it is agreed that such Additional Commitment Party will be granted the title or designation set forth opposite such Additional Commitment Party s name on Schedule I with respect to the Facility.

Each Additional Commitment Party agrees that (i) the syndication of the Facility shall be managed by the Arranger until the Arranger determines that the Facility has been successfully syndicated and (ii) its Commitment shall not be syndicated.

As consideration for the Commitments of each Additional Commitment Party, the Company agrees to pay to the Additional Commitment Parties the applicable fees as set forth in (i) the Co-Arranger and Syndication Agent Fee Letter dated the date hereof among the Company, MSSF and each Additional Commitment Party assigned the title of Co-Arranger and Syndication Agent set forth opposite such Additional Commitment Party s name on Schedule I (the Co-Arranger and Syndication Agent Fee Letter) and (ii) the Participant Fee Letter dated the date hereof among the Company, MSSF and each Additional Commitment Party assigned the title of Participant set forth opposite such Additional Commitment Party s name on Schedule I (the Participant Fee Letter , and together with the Co-Arranger and Syndication Agent Fee Letter, the Joinder Fee Letters), in accordance with the provisions hereof and thereof.

Each party hereto confirms that (i) each Additional Commitment Party shall be bound by the terms and conditions of the Commitment Letter, and shall have all the rights and obligations with respect to its Commitment, to the same extent as the same are applicable to MSSF, (ii) the Commitment Letter shall be deemed amended such that the reference to the Administrative Agent and the Arranger in the third paragraph of Annex II to the Commitment Letter shall be deemed to also refer to the Additional Commitment Parties , on a several and not joint basis, and (iii) the Commitment Letter shall be deemed amended such that all references to MSSF in the following Sections of the Commitment Letter shall be deemed to refer to the Commitment Parties , in each case on a several and not joint basis: 3, 4 (with respect to the fees set forth in Annex I to the Term Sheet), 5 (other than with respect to clause (b) of the first sentence thereof), 7 and 8; provided, however, that this paragraph shall not apply to, and the Additional Commitment Parties shall not have any rights or benefits (except as expressly set forth herein) with respect to, (a) roles or titles assigned to MSSF with respect to the Facility set forth in the Commitment Letter, (b) the provisions of the Commitment Letter applicable to the Arranger and the Administrative Agent in their capacities as such and (c) any provisions of the Fee Letter.

This Joinder Agreement may not be assignable by (i) the Company without the prior written consent of each other party hereto or (ii) any Additional Commitment Party without the prior written consent of the Company and MSSF (and in each case, any purported assignment without such consent shall be null and void), is intended to be solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto. Notwithstanding the foregoing, each Additional Commitment Party may assign its Commitment and agreements hereunder, in whole or in part, to any of its affiliates (provided that any such assignment to an affiliate shall not relieve such Additional Commitment Party of its obligations to fund such assigned portion of its Commitment hereunder unless such assignment was approved by the Company).

This Joinder Agreement may not be amended or waived except by an instrument in writing signed by each party hereto. The Company and MSSF agree that no amendment, waiver, supplement or other modification to the Commitment Letter shall be entered into unless the parties thereto and each Additional Commitment Party shall have consented thereto in writing. This Joinder Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one agreement. Delivery of an executed signature page of this Joinder Agreement by electronic transmission shall be effective as delivery of a manually executed counterpart hereof. This Joinder Agreement (including, for the avoidance of doubt, all of the terms of the Commitment Letter incorporated by reference herein) and the applicable Joinder Fee Letter are the only agreements that have been entered into among the Company and each Additional Commitment Party with respect to the Facility and set forth the entire understanding of the parties with respect thereto. No individual has been authorized by any Additional Commitment Party or any its respective affiliates to make any oral or written statements that are inconsistent with this Joinder Agreement or the applicable Joinder Fee Letter. Following the execution and delivery of this Joinder Agreement by each of the parties hereto, the Commitment Letter and this Joinder Agreement shall be construed as a single instrument to the extent necessary to give effect to the provisions hereof. Notwithstanding any provision hereof or of the Commitment Letter, it is agreed and understood that all obligations of each of the Commitment Parties, whether pursuant hereto or pursuant to the Commitment Letter, shall be several and not joint obligations.

This Joinder Agreement shall be governed by, and construed in accordance with, the laws of the State of New York (and for the avoidance of doubt, each Additional Commitment Party hereby acknowledges and agrees that it shall be subject to Section 6 of the Commitment Letter as a party thereto). The parties hereto hereby waive any right they may have to a trial by jury with respect to any claim, action, suit or proceeding arising out of or contemplated by this Joinder Agreement. The parties hereto submit to the exclusive jurisdiction of the federal and New York State courts located in the City of New York in connection with any dispute related to, contemplated by, or arising out of this Joinder Agreement and agree that any service of process, summons, notice or document by registered mail addressed to such party shall be effective service of process for any suit, action or proceeding relating to any such dispute. The parties hereto irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding brought in any

such court and agree that any final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and may be enforced in other jurisdictions by suit upon the judgment or in any other manner provided by law.

This Joinder Agreement (including, for the avoidance of doubt, all of the terms of the Commitment Letter incorporated by reference herein) and the other terms and conditions contained herein shall be subject to the same confidentiality provisions applicable to the Commitment Letter as provided in Section 8 of the Commitment Letter; provided, that each Joinder Fee Letter and the contents thereof shall be subject to the same confidentiality provisions which are applicable to the Fee Letter for purposes of Section 8 of the Commitment Letter.

Each Additional Commitment Party acknowledges that it has, independently and without any reliance upon MSSF or any of its affiliates, or any of its officers, directors, employees, agents, advisors or representatives, and based on the financial statements of Holdco and its subsidiaries and such other documents as it has deemed appropriate, made its own credit analysis and decision to enter into the Commitment and other agreements evidenced by this Joinder Agreement.

The compensation, reimbursement, indemnification, confidentiality, jurisdiction, venue and governing law provisions contained herein or incorporated herein by reference to the Commitment Letter shall remain in full force and effect regardless of whether the Credit Documentation shall be executed and delivered and notwithstanding the termination of this Joinder Agreement, the Commitment Letter, or each Commitment Party s Commitment; provided, that the Company s obligations hereunder with respect to indemnification shall automatically terminate and be superseded by the provisions of the Credit Documentation upon the effectiveness thereof. The Company may terminate the Commitments of each Additional Commitment Party hereunder at any time subject to the provisions of the immediately preceding sentence.

Except as otherwise provided herein, all Commitments of the Additional Commitment Parties shall continue until the earliest to occur of (i) the execution and delivery of Credit Documentation by all parties thereto, (ii) the consummation of the Acquisition without the execution and delivery of Credit Documentation by all parties thereto; provided, that termination pursuant to this clause (ii) shall not prejudice the Company s rights and remedies in respect of any breach of the Commitment Letter or this Joinder Agreement that occurred on or prior to any such termination, (iii) the Commitment Termination Date and (iv) the date of termination by the Company of either the Merger Agreement or the Tender Offer.

[Signature pages follow]

If the foregoing correctly sets forth our agreement, please indicate your acceptance of the terms hereof by returning to us an executed counterpart hereof.

Very truly yours,

BARCLAYS BANK PLC, as an Additional Commitment Party

By: /s/ Noam Azachi
Name: Noam Azachi
Title: Assistant Vice President

[SIGNATURE PAGE TO JOINDER AGREEMENT]

GOLDMAN SACHS BANK USA, as an Additional Commitment Party

By: /s/ Alexis Maged
Name: Alexis Maged
Title: Authorized Signatory

[SIGNATURE PAGE TO JOINDER AGREEMENT]

BANK OF AMERICA, N.A., as an Additional Commitment Party

By: /s/ Robert LaPorte
Name: Robert LaPorte
Title: Vice President

[SIGNATURE PAGE TO JOINDER AGREEMENT]

BNP PARIBAS, as an Additional Commitment Party

By: /s/ Richard Pace
Name: Richard Pace
Title: Managing Director

By: /s/ Nanette Baudon
Name: Nanette Baudon
Title: Vice President

[SIGNATURE PAGE TO JOINDER AGREEMENT]

CITIBANK, N.A., as an Additional Commitment Party

By: /s/ William E. Clark
Name: William E. Clark
Title: Managing Director & Vice President

[SIGNATURE PAGE TO JOINDER AGREEMENT]

DEUTSCHE BANK AG CAYMAN ISLANDS BRANCH, as an Additional Commitment Party

By: /s/ Heidi Sandquist
Name: Heidi Sandquist
Title: Director

By: /s/ Douglas J. Weir
Name: Douglas J. Weir
Title: Director

[SIGNATURE PAGE TO JOINDER AGREEMENT]

Accepted and agreed to as of the date first written above by:

MORGAN STANLEY SENIOR FUNDING, INC.

By: /s/ Anish Shah
Name: Anish Shah
Title: Vice President

COVIDIEN PLC

By: /s/ Kevin G. DaSilva
Name: Kevin G. DaSilva
Title: Vice President and Treasurer

COVIDIEN INTERNATIONAL FINANCE S.A.

By: /s/ Michelangelo Stefani
Name: Michelangelo Stefani
Title: Managing Director

[SIGNATURE PAGE TO JOINDER AGREEMENT]

Schedule I

COMMITMENTS AND TITLES

Commitment Party	Commitment	Title
Morgan Stanley Senior Funding, Inc.	$375,000,000.00	Sole Lead Arranger and Sole Bookrunner
Barclays Bank PLC	$312,500,000.00	Co-Arranger and Syndication Agent
Goldman Sachs Bank USA	$312,500,000.00	Co-Arranger and Syndication Agent
Bank of America, N.A.	$ 62,500,000.00	Participant
BNP Paribas	$ 62,500,000.00	Participant
Citibank, N.A.	$ 62,500,000.00	Participant
Deutsche Bank AG Cayman Islands Branch	$ 62,500,000.00	Participant

Total: $1,250,000,000.00