

(b) Comply with all Contractual Obligations and Requirements of Law except to the extent that failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 6.05 Performance of Material Contracts.** Perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, maintain each Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time requested by the Lender and, upon request of the Lender, make to each other party to each Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract.

**Section 6.06 Maintenance of Property; Insurance.**

(a) Maintain and preserve all of its property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted.

(b) Maintain insurance with respect to its property and business (including without limitation, property, casualty and business interruption insurance) with financially sound and reputable insurance companies that are not Affiliates of the Borrower, in such amounts and covering such risks as are usually insured against by similar companies engaged in the same or a similar business. Each policy of liability insurance shall name the Lender as an additional insured and each policy of real property insurance shall name the Lender as mortgagee loss payee and each policy insuring any other Collateral shall name the Lender as lender loss payee.

**Section 6.07 Inspection of Property; Books and Records; Discussions.**

(a) Keep proper books of records and accounts, in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions and assets in relation to its business and activities.

(b) Permit the Lender and its representatives to (i) discuss Borrower's business operations, properties and financial and other condition with its officers and employees and its independent public accountants and (ii) upon reasonable notice to visit the Borrower's offices and inspect and make abstracts from any of its books and records including, without limitation, permitting the Lender to examine any Collateral securing the Loans and reimburse the Lender for all examination fees and expenses incurred in connection with such examinations at its then current rate for such services and for its out-of-pocket expenses incurred in connection therewith; provided, however that the Lender agrees that, so long as no Default or Event of Default has occurred and is continuing, the Borrower's obligations to reimburse the Lender for its examinations shall

be limited to no more than one examination per any Loan Year plus its out-of-pocket expenses incurred in connection therewith.

**Section 6.08 Environmental Laws.**

(a) Obtain, comply and maintain in all material respects, and ensure the same in all material respects by all tenants and subtenants, if any, with all applicable Environmental Laws, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws.

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to remove and clean up all Hazardous Materials from any of its properties required under Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws.

**Section 6.09 Use of Proceeds.** Use the proceeds of the Loans (a) to finance the acquisition of assets by the Borrower and the Domestic Subsidiaries in the ordinary course of business, including the purchase of inventory and equipment, (b) to finance Capital Expenditures of the Borrower and of its Domestic Subsidiaries, (c) to repurchase shares of the Borrower's stock; and (d) for general corporate purposes of the Borrower, in each case to the extent not prohibited under any Requirement of Law or the Loan Documents.

**Section 6.10 Additional Collateral; etc.**

(a) With respect to any property acquired after the Closing Date by any Loan Party that is intended to be subject to a Lien created by any Loan Document, other than any property subject to a Lien expressly permitted by this Agreement, as to which the Lender, does not have a perfected Lien, promptly, and in any event within 60 days of acquiring such property:

(i) execute and deliver to the Lender such supplements or amendments to the Security Agreement or such other documents as the Lender deems necessary or advisable to grant to the Lender a security interest in such property; and

(ii) take all actions necessary or advisable to grant to the Lender a perfected first priority security interest in such property, including the filing of UCC-1 financing statements in such jurisdictions as may be required by the Security Agreement or by law or as may be requested by the Lender; and

(iii) execute and deliver to the Lender such supplements or amendments to any Loan Document as the Lender deems necessary or advisable to grant to the Lender a perfected first priority security interest in the Equity Interests of such new Subsidiary that are owned by any Loan Party;

(iv) deliver to the Lender the certificates representing such Equity Interests, together with undated stock powers, in blank, executed by a duly authorized officer of the relevant Loan Party;

(v) deliver to the Lender originals of any promissory notes evidencing intercompany loans provided by a Loan Party to any Person that is not a Loan Party, indorsed in blank by a duly authorized officer of the relevant Loan Party; and

(vi) cause such new Subsidiary that the Borrower would like to become a Loan Party (an “Additional Loan Party”) to: (A) execute and deliver joinders to the Guaranty the Security Agreement, each in the form provided by the Lender (B) take all actions necessary or desirable to grant to the Lender a perfected first priority security interest in the Collateral owned by such new Subsidiary, including the filing of UCC-1 financing statements in such jurisdictions as may be required by such security agreement or by law or as may be requested by the Lender; and (C) execute and deliver a secretary’s certificate of such new Loan Party, with charter documents, by-laws and appropriate resolutions attached.

**Section 6.11 Further Assurances.** Promptly upon the request of the Lender:

(a) Correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgement, filing or recordation thereof; and

(b) Do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, conveyances, pledge agreements, mortgages, deeds of trust, trust deeds, assignments, financing statements and continuations thereof, termination statements, notices of assignments, transfers, certificates, assurances and other instruments as the Lender, may require from time to time in order to:

(i) carry out more effectively the purposes of the Loan Documents;

(ii) to the fullest extent permitted by applicable law, subject any Loan Party’s properties, assets, rights or interests to the Liens now or hereafter intended to be covered by the Security Agreement and the other Loan Documents;

(iii) perfect and maintain the validity, effectiveness and priority of the Liens intended to be created under the Security Agreement and the other Loan Documents;

(iv) each Loan Party (including, without limitation, each Additional Loan Party) will execute and deliver, or cause to be executed and delivered, to the Lender such documents, agreements and instruments (including, without limitation, account control agreements, landlord waivers and bailee agreements), and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, and other documents and such other actions or deliveries, as applicable), which may be required by law or which the Lender may, from time to time, reasonably

request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Security Agreement, all in form and substance reasonably satisfactory to the Lender and all at the expense of the Borrower; and

(v) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively to the Lender, the rights granted or now or hereafter intended to be granted to the Lender under any Loan Document or under any other instruments executed in connection with any Loan Document to which any Loan Party is or is to be a party.

**Section 6.12 Deposit Accounts.** In order to facilitate the Lender's maintenance and monitoring of its security interests in the Collateral, Borrower shall maintain, and cause each of the other Loan Parties to maintain, all of its operating accounts and deposit accounts with the Lender or an Affiliate of the Lender; provided, however, as a matter of convenience, each Loan Party may maintain up to \$25,000 in deposits in demand deposit accounts at other commercial banking institutions in locales where the Lender or an Affiliate of Lender does not maintain a banking branch; provided further that the Borrower shall use its commercially reasonable best efforts to cause such other banking institutions to execute control agreements in favor of the Lender on forms acceptable to Lender with regards to such deposit accounts.

## ARTICLE VII

### NEGATIVE COVENANTS

So long as the Lender has any Revolving Credit Commitment hereunder, or any Loans, Letter of Credit Obligations, or any other amounts payable to the Lender hereunder or under any other Loan Document have not been indefeasibly paid in full, the Borrower shall not, and shall not permit any other Loan Party to, do any of the following without the prior written consent of the Lender:

**Section 7.01 Limitation on Debt.** Create, incur, assume, permit to exist or otherwise become liable with respect to any Debt, except:

- (a) Debt of any Loan Party existing or arising under this Agreement and any other Loan Document;
- (b) Debt of:
  - (i) the Borrower owed to any other Loan Party; and
  - (ii) any Loan Party owed to the Borrower or any other Loan Party;
- (c) Debt incurred to finance the acquisition of fixed or capital assets (including Capital Lease Obligations) secured by a Lien permitted under Section 7.02(f); *provided that*, (i) such Debt is incurred simultaneously with such acquisition; (ii) such

Debt when incurred shall not exceed the purchase price of the asset financed and (iii) the aggregate principal amount of Debt permitted by Section 7.01(b), shall not exceed \$500,000 in the aggregate at any time outstanding;

(d) Debt existing on the date hereof and previously disclosed in writing to the Lender;

(e) Subordinated Debt; and

(f) Other unsecured Debt of the Borrower or any other Loan Parties in an aggregate principal amount not to exceed \$500,000 at any time.

**Section 7.02 Limitation on Liens.** Create, incur, assume or permit to exist any Lien on any property or assets (including Equity Interests of any of its Subsidiaries) now owned or hereafter acquired by it or on any income or rights in respect of any thereof, except:

(a) Liens created pursuant to or arising under any Loan Document;

(b) Liens imposed by law for taxes, assessments or governmental charges not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted if adequate reserves with respect thereto are maintained in accordance with GAAP on the books of the applicable Person;

(c) Carriers', warehousemen's, mechanics', materialmen's, repairmen's and other similar Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 60 days or that are being contested in good faith and by appropriate proceedings diligently conducted;

(d) Pledges and deposits and other Liens (i) made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations, and (ii) securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Borrower or another Loan Party;

(e) Liens (including deposits) to secure the performance of bids, tenders, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of like nature, in each case in the ordinary course of business;

(f) Easements, zoning restrictions, rights-of-way, minor defects or irregularities in title and similar encumbrances on real property imposed by law or arising in the ordinary course of business which, in the aggregate, are not material in amount and which do not materially detract from the value of the affected property or interfere materially with the ordinary conduct of business of the Borrower or any of its Subsidiaries;

(g) Liens on fixed or capital assets acquired by the Borrower or any other Loan Party after the date hereof; *provided that* (i) such security interests secure Debt permitted by Section 7.01(b), (ii) such Liens and the Debt secured thereby are incurred simultaneously with such acquisition, (iii) such Liens shall not apply to any other property or assets of the Borrower or any other Loan Party, and (iv) the amount of Debt initially secured thereby is not more than 100% of the purchase price of such fixed or capital asset;

(h) A Lien in favor of Hitachi Capital America Corp. (“Hitachi”) on that certain Contrua AKTIV 700/700/600 leased by Borrower from Hitachi; and

(i) Judgment or other similar Liens in connection with legal proceedings in an aggregate principal amount net of amounts for which insurance providers have delivered written acknowledgements of coverage up to \$500,000 in the aggregate, which, whether immediately or with the passage of time (i) do not give rise to an Event of Default under Section 8.01(g) and (ii) are being contested in good faith by appropriate proceedings diligently conducted.

### **Section 7.03 Mergers; Nature of Business.**

(a) Merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred and be continuing (i) any Subsidiary of the Borrower that is a Loan Party may merge into the Borrower in a transaction in which the Borrower is the surviving corporation, (ii) any Loan Party (other than the Borrower) may merge into any other Loan Party in a transaction in which the surviving entity is a Loan Party, and (iii) any Subsidiary that is not a Loan Party may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lender.

(b) Engage in any business other than (i) businesses of the type conducted by the Borrower and its Subsidiaries on the date hereof, including without limitation, the design, development and manufacture of autoclavable, battery-powered and electric, multi-function surgical drivers and shavers used primarily in the orthopedic and maxocranial facial markets, other handheld surgical devices and ancillary products and the manufacture and sale of rotary air motors.

**Section 7.04 Limitation on Investments.** Make any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase, hold or acquire any Equity Interests, bonds, notes, debentures or other debt securities of, or any assets constituting a business unit of, or make any other investment in, any Person (all of the foregoing, “**Investments**”), except:

(a) Investments in Cash Equivalents;

(b) Loans and advances to officers, directors, or employees of any Loan Party in the ordinary course of business (including for travel, entertainment and relocation expenses) in an aggregate amount not to exceed \$50,000 at any time outstanding;

(c) Intercompany Investments by any Loan Party in the Borrower or any Person that, prior to such Investment, is a Loan Party;

(d) Extensions of trade credit in the ordinary course of business (including any instrument evidencing the same and any instrument, security or other asset acquired through bona fide collection efforts with respect to the same);

(e) Eligible Investment Securities that are held in the Pledged Account; and

(f) Only so long as no Default or Event of Default has occurred and is continuing either before or following the making of any such Investment, the Borrower may make other Investments that would not otherwise be permitted by this Section 7.04 (“Other Investments”), provided, that (a) Borrower shall provide Lender with a schedule of each Other Investment with a value (valued at cost) in excess of \$500,000 attached to each Borrowing Base Certificate delivered pursuant to Section 6.02(c); and (b) if at any time the aggregate amount (valued at cost) of Other Investments made by the Borrower and the other Loan Parties on a consolidated basis on or after the Closing Date exceeds \$500,000, the amount of any additional Other Investments permitted pursuant to this Section 7.04(f) in excess of \$500,000 shall be limited to the amount of Excess Capital as calculated on a pro forma basis as set forth on an Excess Capital Certificate delivered to the Lender prior to the making of any such Other Investment.

**Section 7.05 Limitation on Dispositions.** Dispose of any of its property, whether now owned or hereafter acquired, or issue or sell any Equity Interests to any Person, except:

(a) The sale or Disposition of machinery and equipment no longer used or useful in the business of any Loan Party;

(b) The Disposition of obsolete or worn-out property of a Loan Party in the ordinary course of its business;

(c) The sale or lease of inventory for fair value in the ordinary course of business of a Loan Party; and

(d) The sale of securities of the types described in Section 7.04(e) for fair value in the ordinary course of business of a Loan Party.

**Section 7.06 Limitation on Sales and Leasebacks.** Enter into any arrangement with any Person whereby such Loan Party shall sell or otherwise transfer any property owned by such Loan Party to (a) such Person and thereafter rent or lease such Property from such Person or (b) any other Person to whom funds have been or are to be advanced by such Person on the security of such Property or rental obligations of such Loan Party.

### **Section 7.07 Limitation on Restricted Payments; Transfers to non-Loan Parties.**

(a) Declare or pay any dividend on, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Equity Interests of the Borrower or any of its Subsidiaries, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of the Borrower or any of its Subsidiaries (collectively, “**Restricted Payments**”), provided, that:

(i) The contemplated Dutch Tender Offer which Pro-Dex, Inc. intends to use the proceeds from Term Loan A for, is not a Restricted Payment and is allowable pursuant to Section 6.09.

(ii) a Subsidiary of the Borrower may make a Restricted Payment to the Borrower;

(iii) The Borrower may declare and pay dividends and make other distributions and payments with respect to its Equity Interests if payable solely in its Equity Interests; and

(iv) Only so long as no Default or Event of Default has occurred and is continuing either before or following the making thereof, the Borrower may make Restricted Payments that would not otherwise be permitted by this Section 7.07, provided that such Restricted Payments shall be limited to the amount of Excess Capital as calculated on a pro forma basis as set forth on an Excess Capital Certificate delivered to the Lender prior to the making of any such Restricted Payment.

(b) Transfer any asset of a Loan Party to an Affiliate that is not a Loan Party.

### **Section 7.08 Limitation on Prepayments of Debt and Amendments of Debt Instruments.**

(a) Make or offer to make any optional or voluntary payment or prepayment on or redemption, defeasance or purchase of any (whether principal or interest) Subordinated Debt; or

(b) Amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to any Subordinated Debt, other than any amendment, modification, waiver or other change which (i) would extend the maturity or reduce the amount of any payment of principal thereof or reduce the rate or extend any date for payment of interest thereon; and (ii) does not involve the payment of a consent fee.

**Section 7.09 Limitation on Transactions With Affiliates.** Enter into or be a party to any transaction including any purchase, sale, lease or exchange of property, the



rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate unless such transaction is:

- (a) Otherwise permitted by the terms of this Agreement; or
- (b) In the ordinary course of business of the Borrower or the relevant Subsidiary, as the case may be, and on fair and reasonable terms no less favorable to the Borrower or the relevant Subsidiary, as the case may be, than those that would have been obtained in a comparable transaction on an arm's length basis from an unrelated Person.

**Section 7.10 Fiscal Year.** Change the end of the Borrower's fiscal year to a date other than June 30.

**Section 7.11 Limitation on Restrictive Agreements.** Enter into or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Subsidiary of the Borrower to:

- (a) Make Restricted Payments in respect of any Equity Interests of such Subsidiary held by, or pay any Debt owed to, the Borrower or any other Subsidiary of the Borrower;
- (b) Make loans or advances to, or Investments in, the Borrower or any other Subsidiary of the Borrower; and
- (c) Transfer any of its assets to the Borrower or any other Subsidiary of the Borrower, except for such encumbrances or restrictions (i) existing under the Loan Documents, and (ii) with respect to a Subsidiary imposed pursuant to an agreement that has been entered into in connection with the Disposition of all or substantially all of the Equity Interests or assets of such Subsidiary.

**Section 7.12 Limitation on Amendments of Material Contracts.** Amend, supplement or otherwise modify (pursuant to a waiver or otherwise):

- (a) Its articles of incorporation, certificate of designation, operating agreement, bylaws or other organizational document; or
- (b) The terms and conditions of any Material Contract;

in each case, in any respect materially adverse to the interests of the Lender, without the Lender's prior written consent.

**Section 7.13 Financial Covenants.** Permit, as of any Measurement Date:

- (a) the Debt Service Coverage Ratio for the Measurement Period ending on such Measurement Date to be less than or equal to 1.25 to 1.0; or
- (b) the Asset Coverage Ratio to be less than 1.25 to 1.00.

**ARTICLE VIII**  
**EVENTS OF DEFAULT AND REMEDIES**

**Section 8.01 Events of Default.** Each of the following events or conditions shall constitute an “**Event of Default**” (whether it shall be voluntary or involuntary or come about or be effected by any Requirement of Law or otherwise):

(a) (i) the Borrower fails to pay any principal of any Loan or any interest thereon when due and such failure remains unremedied for a period of five (5) days, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise; or (ii) any fee or other amount payable hereunder or under any other Loan Document when due and such failure remains unremedied for a period of five (5) days;

(b) any representation, warranty, certification or other statement of fact made or deemed made by or on behalf of any Loan Party herein or in any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder or in any certificate, document, report, financial statement or other document furnished by or on behalf of any Loan Party under or in connection with this Agreement or any other Loan Document, proves to have been false or misleading in any material respect on or as of the date made or deemed made;

(c) any Loan Party fails to perform or observe any covenant, term, condition or agreement contained in Section 6.03, Section 6.04(a), Section 6.09, Section 6.11, or Article VII;

(d) any Loan Party fails to perform or observe any other covenant, term, condition or agreement contained in this Agreement or any other Loan Document (other than as provided in subsections (a) through (c) of this Section 8.01, and such failure continues unremedied for a period of thirty (30) days after written notice to the Borrower from the Lender;

(e) Any Loan Party:

(i) fails to pay any principal or interest in respect of any Debt in excess of \$100,000 (including any Guaranty Obligation, but excluding any Debt outstanding under this Agreement) when due and such failure continues after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt;

(ii) fails to perform or observe any other covenant, term, condition or agreement relating to any such Debt or contained in any instrument or agreement evidencing or relating thereto, or any other event occurs or condition exists, the effect of which failure or other event or condition is to cause, or to permit the holder or beneficiary of such Debt (or a trustee or agent on behalf of such holder or beneficiary) to cause, with the giving of notice, if required, such Debt to become due prior to its stated maturity (or, in the case of any such Debt constituting a Guaranty Obligation, to become payable); or