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U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

102205145

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

N.I.T., Inc

82302

- Individual(s) Association General Partnership Limited Partnership Corporation-State FL Other

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)

Name: Axi Medical, Inc.

Internal Address: Stonehouse Commerce Park

Street Address: 900 Westmont Drive

City: TOURO State: VA Zip: 23168

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State DELAWARE Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 10-6-98

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,023,387

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: LARSON + LARSON, P.A.

Internal Address:

Street Address: 11199 69th St., N

City: LARGO State: FL Zip: 33773

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41) \$ 40.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

12-0551

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

H. William LARSON

Name of Person Signing

[Signature]

Signature

8-16-02

Date

Total number of pages including cover sheet, attachments, and document: 26

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

08/28/2002 LMUELLER 00000104 120551 2023387

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TRADEMARK REEL: 002571 FRAME: 0234

This Asset Purchase Agreement (this "Agreement") is made and entered into as of the 6<sup>th</sup> day of October, 1998, by and among: (i) N.I.T., Inc., a Florida corporation (hereinafter "Seller"); (ii) **Joseph Harms** (the "Principal"); and (iii) **Avid Medical, Inc.**, a Delaware corporation (hereinafter "Buyer").

RECITALS

A. Seller is engaged in the manufacture and sale of medical products (the "Business" of Seller), with its principal place of business at 390 Scarlet Boulevard, Oldsmar, Florida 34689 (the "Premises"). The Principal is the majority shareholder of Seller.

B. Buyer desires to acquire substantially all of the assets of Seller, subject to certain liabilities, and to continue all of the business conducted by Seller.

C. Seller desires to sell substantially all of its assets to Buyer and to have Buyer assume certain of its liabilities pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the covenants and agreements herein contained and the benefits to be derived herefrom, the parties, intending to be legally bound, agree as follows:

1. Recitals. The recitals set forth above constitute a part of this Agreement.

2. Sale and Purchase of Assets to be Purchased. Relying upon the representations and warranties and subject to the terms and conditions contained herein, Seller agrees to sell, and Buyer agrees to purchase, the Business of Seller as a going concern and all of the assets of Seller, as of the date of this Agreement, with only such changes as shall occur in the ordinary course of business of Seller from the date hereof and until the Closing (as defined), such business and assets being hereinafter referred to as the "Acquired Assets" excluding, however, the Retained Assets as defined in Section 3. Acquired Assets means and includes all right, title and interest of Seller in and to all of the following:

(a) All tangible personal property, such as machinery, tools, dies, appliances, benches, cabinets, spare and replacement parts, molds, all expensed inventories and supplies or materials, engineering, manufacturing and administration furniture and equipment, removable fixtures, office furniture and equipment;

(b) All inventories of the Seller used or to be used in connection with the Business, including all inventories and materials used or to be used in the manufacture of finished products, work-in-process, finished products and materials, components, component parts, and subassemblies, and all other tangible property customarily used or to be used in the manufacture of finished products, or performing services;

(c) All rights and interests of Seller under purchase orders, sales orders and other contracts, quotes, bids for contracts, contracts and orders in process, agreements, commitments, licenses and personal property leases, indentures, guarantees and other similar arrangements and rights thereunder, including, but not limited to, all rights and interests of Seller under the agreement between Seller and Mentor Corporation;

(d) All books, files, and records of Seller relating to the Business, supplier lists, dealer and distributor lists, pricing and cost information, and business and marketing plans and proposals, all computer software (including data and related documentation), manuals, advertising and promotional materials;

(e) All of the Seller's goodwill arising from the operation of the Business, including, but not limited to, the telephone numbers, telephone directory listings and advertisements, and all client lists, relationships and arrangements with clients and others with whom the Seller has done business;

(f) Cash on hand and in accounts (subject to Sections 3(e) and 7(c)), notes and other receivables, claims, deposits, prepayments, refunds, causes of action, choses in action, rights of recovery, rights of setoff and rights of recoupment;

(g) Franchises, approvals, 510(k)s, permits, certifications, licenses, orders, registrations, certificates, variances and similar rights obtained from governments and governmental authorities;

(h) (i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto and all patents, patent applications and patent disclosures, (ii) all trademarks, service marks, trade dress, logos and trade names, together with all translations, adaptations, derivations and combinations thereof, and including all goodwill associated therewith; (iii) all trade secrets and confidential business information; (iv) all product drawings, designs and specifications; and (v) all goodwill associated with any of the foregoing, licenses and sublicenses granted and obtained with respect thereto and rights thereunder, remedies against infringement thereof and all rights to protection of interest therein under the laws of all jurisdictions (collectively, all of the foregoing the "Intellectual Property");

(i) The names "NIT" and "Needle & Infusion Technologies"; and

(j) All other property and assets of the Seller of whatever nature and wherever situated, excluding, however, the Retained Assets.

3. **Retained Assets.** Excluded from the definition of Acquired Assets, and therefore excluded from the sale hereunder, are all of the following assets and property of Seller (collectively, the "Retained Assets"):

(a) The Excluded Receivables (as defined in Section 7(e));

(b) The corporate charter, qualifications to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, and other documents relating to the organization, maintenance and existence of the Seller as a corporation;

(c) All rights to any refund or credits for any taxes of Seller for periods prior to the Closing Date; and

(d) All claims, causes of action, rights or refunds relating to or arising out of any of the Retained Assets or the Excluded Liabilities (as defined in Section 6).

(e) The parties acknowledge that the April 30 Balance Sheet (as defined below) includes as an asset of Seller \$204,658 in a money market account. The parties acknowledge that such amount has been withdrawn from such account and disbursed to the Principal. The parties further acknowledge that not included on such balance sheet is a receivable from Mentor Corporation in the amount of approximately \$450,000 and such receivable has also been disbursed to the Principal.

4. **Contracts in Process.** On the Closing Date and concurrent with Closing hereunder, Seller will transfer to Buyer the obligation to perform all contracts in process with respect to customers' orders relating to Seller's business listed on Schedule 4, as updated by Buyer and Seller through the Closing Date, and all of Seller's rights thereunder, and Buyer will agree to assume and fulfill, in accordance with their respective terms, all of such contracts in process, and shall receive all income therefrom, which transfer shall be without consideration other than the consideration of Seller's transfer of such contracts in process and Buyer's agreement to assume the liability for completion of such contracts in process. Buyer shall also assume the contracts listed on Schedule 4, as updated by Buyer and Seller through the Closing Date, between the Seller and third parties, where Seller is a purchaser of goods or services and such contracts relate to the Business, provided that such contracts are assumable by their terms or with the other party's consent obtained. Any provision of this Agreement to the contrary notwithstanding, no order, contract or other agreement shall be deemed as assigned hereunder if such assignment would constitute a violation thereof, but Buyer and Seller shall use their best efforts to give economic effect to any of such contracts, orders or other agreements which may not be assigned by Seller and assumed by Buyer.

5. **Assumed Liabilities.** On the Closing Date, and relying upon the representations and warranties of Seller and the Principal, Buyer will assume all of the following liabilities (collectively, the "Assumed Liabilities") of the Seller:

(a) The liabilities of Seller to trade creditors and others (the "Scheduled Payables") incurred in the normal course of business and of the type reflected as current liabilities on the balance sheet of Seller dated April 30, 1998 and attached hereto as Exhibit 5(a) (the "April

30 Balance Sheet”). The identity of the Scheduled Payables (detailed by invoice) and the amounts due such creditors from Seller as of the date of the April 30 Balance Sheet are set forth on Schedule 5(a), which Schedule shall be updated at Closing.

(b) All liabilities and obligations of the Seller under the contracts assigned by Seller and assumed by Buyer under the provisions of Section 4 above.

(c) Any customers of the Seller who either (i) request or demand after closing that the Buyer repair or replace products sold by the Seller prior to closing, or (ii) request or demand that Buyer provide goods or services based on a claim that such was promised by Seller, shall be handled as set forth in this subsection 5(c). Unless the Buyer shall make the repair or provide the replacement products or other goods or services itself without charge or notice to Seller, the Buyer will promptly give Seller written notice of the customer's request or demand for the repair work or replacement products or other goods or services, offering the Seller the option to: (x) have Seller perform the repair work or provide the replacement products or other goods or services, or (y) authorize the Buyer to perform the repair work or provide the replacement products or other goods or services at Seller's expense (such expense to be no less than Buyer's cost and no greater than Buyer's customary charge), or (z) obtain a replacement product from the manufacturer of such product. Seller shall respond to Buyer's written notice within two (2) business days after receipt thereof by Seller. If Seller refuses to perform the repair work or provide the replacement products or other goods or services itself, or is unable to obtain a replacement product from the manufacturer, and refuses or fails to timely notify the Buyer not to perform the repair work or provide the replacement products or other goods or services, then, in such event, Buyer shall be under no obligation to provide the replacement products or other goods or services, but Buyer may, at Buyer's election, perform the repair work or provide the replacement products or other goods or services and in such event Seller shall be obligated to reimburse Buyer for Buyer's customary charge for such goods or services. If Seller gives Buyer timely written notice not to perform the repair work or provide the replacement products or other goods or services, Buyer shall not be entitled to provide the replacement products or other goods or services at the expense of Seller, but Seller shall indemnify and save and hold harmless Buyer from any liability arising therefrom.

6. **Excluded Liabilities.** Buyer shall not assume or otherwise be liable for any of the following liabilities or obligations of Seller (collectively, the “Excluded Liabilities”),

(a) Any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Internal Revenue Code Sec. 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

(b) Any liabilities for warranty or product liability claims relating to products manufactured, sold and/or delivered by Seller prior to Closing, subject to the provisions of Section 5(c) above.

(c) Any liabilities to shareholders of Seller.

(d) The lease under which Seller leases an automobile for use by the Principal.

(e) Any other liabilities of Seller not included within the definition of Assumed Liabilities, whether or not such liabilities are known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due.

(f) In the event there are any sales, transfer, use, gross receipts, registration or similar taxes arising out of or in connection with the transactions contemplated by this Agreement, Seller shall be responsible for such taxes.

**7. Closing; Deposit; Purchase Price and Adjustments.**

(a) The closing of the transactions under this Agreement (the "Closing") shall take place at 10:00 A.M. local time, on the 16th day of November, 1998 ("Closing Date") at the offices of Seller in Oldsmar, Florida, or such other time and place as the parties may agree upon, provided that the conditions precedent in Section 11(a) have been satisfied (unless waived by Buyer), and provided that the conditions precedent in Section 11(b) have been satisfied (unless waived by Seller). Notwithstanding the foregoing, the Closing shall not take place prior to satisfaction or written waiver of all notice requirements provided under applicable statutory law. The Buyer may postpone the Closing for a period of up to one (1) day. The parties acknowledge that the Closing Date shall not be extended beyond November 17, 1998.

(b) On or before October 7, 1998, Buyer shall deposit the sum of Twenty Thousand Dollars (\$20,000.00) with the law firm of Surovell, Jackson, Colten & Dugan, P.C., counsel for Buyer, to be held in escrow (the "Deposit") and shall notify Seller of the delivery of the Deposit, and the Deposit shall be:

(i) Applied at closing as part of the purchase price for the Assets sold; or

(ii) Returned to the Buyer in the event (A) Seller defaults under the terms of this Agreement, or (B) the conditions to Buyer's obligation to close as hereinbelow set forth are not satisfied within the periods provided or waived in writing by Buyer; or

(iii) Delivered to the Seller in the event (A) Buyer defaults under the terms of this Agreement, or (B) the conditions to Seller's obligation to close as hereinbelow set forth are not satisfied within the periods provided or waived in writing by Seller. In addition, the Deposit shall be delivered to Seller in the event the Buyer fails to have the funds necessary to close the

transactions under this Agreement; in such event, this Agreement shall terminate and the Seller shall be relieved of its obligations hereunder. The Deposit shall be delivered to Seller upon notice to Surovell, Jackson, Colten & Dugan, P.C. that Seller is entitled to the Deposit under this Agreement. The Buyer shall keep the Seller informed of the status of the Private Placement.

(c) At the Closing, and subject to the terms and conditions set forth in this Agreement, Buyer shall pay to Seller and the Principal the Purchase Price (as defined herein). The Purchase Price shall be allocated as set forth in Exhibit 7(c). The Purchase Price shall consist of the following:

(i) Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000), in cash or certified funds (the "Cash Portion of the Purchase Price"), subject to adjustments pursuant to this Agreement;

(ii) Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000) by promissory note to Seller (the "Note"), subject to adjustments pursuant to this Agreement. The Note shall be substantially in the form annexed hereto as Exhibit 7(c)(ii); and

(d) The Cash Portion of the Purchase Price shall be reduced to the extent that the Net Value of the Adjusted Assets less the Adjusted Liabilities as reflected on the Closing Balance Sheet (as hereafter defined) is less than the Net Value of the Adjusted Assets less the Adjusted Liabilities as reflected on the April 30 Balance Sheet.

(e) To the extent that the Net Value of the Adjusted Assets less the Adjusted Liabilities as reflected on the Closing Balance Sheet is greater than the Net Value of the Adjusted Assets less the Adjusted Liabilities as reflected on the April 30 Balance Sheet, Seller shall retain cash on hand or in accounts in an amount equal to the amount by which such Net Value as reflected on the Closing Balance Sheet exceeds the Net Value as reflected on the April 30 Balance Sheet. In the event all or any portion of such cash is not available, the Cash Portion of the Purchase Price shall be increased by the amount by which such Net Value as reflected on the Closing Balance Sheet exceeds the Net Value as reflected on the April 30 Balance Sheet, or at the option of Buyer, Buyer will reassign to Seller accounts receivable of Seller in a like amount and as selected by Buyer. The accounts receivable to be reassigned to Seller pursuant to the preceding sentence shall be mutually selected by the Seller and Buyer.

(f) The phrase "Adjusted Assets" means the assets of Seller adjusted to exclude the Retained Assets. The phrase "Adjusted Liabilities" means the liabilities of the Seller to the extent that such liabilities are included within the definition of Scheduled Payables. The phrase "Net Value" means the difference between the Adjusted Assets and the Adjusted Liabilities. The parties agree that the Net Value of Seller as of April 30, 1998 as reflected on the April 30 Balance Sheet was \$483,617, which is determined by subtracting from total assets of \$951,164 as reflected in such April 30 Balance Sheet the Retained Assets consisting of (i) cash in Seller's money market account amounting to \$204,658, and (ii) the category of other assets amounting to \$1,600 for a net of

\$744,906 as the Adjusted Assets, and then reducing from such Adjusted Assets the amount of the Adjusted Liabilities consisting of the total liabilities of \$261,289 as reflected on the April 30 Balance Sheet, which such total liabilities are the same as the Scheduled Payables.

(g) Closing Balance Sheet shall mean the balance sheet for Seller as of the day immediately preceding the Closing Date, setting forth the assets and liabilities of Seller. The Closing Balance Sheet shall be prepared in the manner consistent with the internal accounting principals, practices and procedures used by Seller in connection with the preparation of the April 30 Balance Sheet.

(h) **Incentive Payment**. In addition to the amounts otherwise payable to Seller under this Agreement, Seller shall be entitled to receive incentive payments up to a maximum of \$500,000 (the "Maximum Payment") in accordance with the provisions of this section:

(i) Commencing with the Buyer's fiscal year beginning April 1, 1999, and continuing for four (4) additional fiscal years, Seller shall be entitled to receive an amount equal to one-third of the gross margin on NIT products in excess of the minimum gross margin for each of such fiscal years until, if achieved, Seller has received the Maximum Payment. As used herein, "gross margin on NIT products" means gross sales minus cost of goods sold determined in accordance with generally acceptable accounting principles computed as though NIT were a separate stand-alone subsidiary or division of Buyer. "Minimum gross margin" means \$885,000 for the fiscal year beginning April 1, 1999, and \$1,013,000, \$1,165,000, \$1,282,000 and \$1,410,000, respectively, for the second through fifth fiscal years. For example, if sales for fiscal year beginning April 1, 1999 are \$5 million, and cost of goods are \$3.5 million, the gross margin is \$1.5 million, the excess above \$885,000 is \$615,000, and the incentive payment is \$205,000 (i.e., one-third of \$615,000).

(ii) For purposes of the foregoing, NIT products means those products now being offered and sold by NIT to its customers, and any additional products which Buyer may designate as NIT products.

(iii) Sale price and terms of sale for NIT products, and purchase price and terms of purchase for items acquired by Buyer for sale as NIT products, shall be determined by Buyer from time to time, in the normal course of Buyer's business and by Buyer's executive officers, with consultation with Mr. Harms so long as employed by Buyer, with the objective of achieving appropriate margins to sustain the business of Buyer as a profitable going concern.

8. **Stock Purchase Option**. Seller shall have the right and option to acquire shares of the Class A Common Stock of Buyer in accordance with the provisions of this section. Buyer has informed Seller of Buyer's currently pending private placement of shares of Buyer's Common Stock, which placement is expected to provide gross receipts to Buyer of at least \$1 million, and to be completed on or about November 15, 1998 (the "Private Placement").



(i) At or concurrent with closing under this Agreement, Seller shall have the right and option to acquire not more than \$250,000, nor less than \$100,000 in purchase price for shares of Buyer's Common Stock on the same terms as Buyer shall have offered in the Private Placement.

(ii) To the extent that Seller shall not have exercised the right in the preceding sentence, Seller shall have the right and option to acquire shares of Common Stock at a price per share equal to 150 percent of the price per share in the Private Placement (the "Exercise Price") to a maximum of \$250,000 less the amount, if any, applied for the purchase of stock under (i) above, for the period commencing from the closing under this Agreement and ending eighteen (18) months thereafter.

(iii) For a period of eighteen (18) months commencing on the first day of the nineteenth (19) month following closing, Seller shall have the right and option to acquire shares at the Exercise Price for an aggregate of \$100,000, reduced by the amount which may have been used for the purchase of shares by application of the preceding sentences.

(iv) For a period of eighteen (18) months commencing on the first day of the thirty-seventh (37th) month and ending on the last day of the sixtieth (60th) month following closing, Seller shall have the right and option to acquire shares at the Exercise Price for an aggregate of \$50,000, reduced by the amount which may have been used for the purchase of shares by application of the preceding sentences.

(v) By way of example, if Seller purchases \$100,000 concurrent with closing of the Private Placement as provided under (i) above, Seller has the continuing right to acquire an additional \$150,000 for the period of 18 months following the Closing, but there is no option to acquire under (iii) or (iv) above. If nothing has been acquired under (i), but \$100,000 or more is acquired under (ii), there is no option to acquire under (iii) or (iv).

(vi) Seller may assign to Principal the right in this section to acquire Buyer's Common Stock.

9. **Carry on in Ordinary Course; Buyer's Right of Inspection.** Following the execution of this Agreement and pending the Closing, Seller will: (a) continue to operate the Business in the ordinary course, retaining all employees of the Business where possible and shall deliver the said business to Buyer at closing, using best efforts to keep its customer base intact, to pay all due and payable vendor and supplier accounts, and to maintain the good reputation of the business for the benefit of the Buyer; and (b) provide Buyer and its representatives access to the Premises at all reasonable times for inspection of the books and records of Seller and to allow Buyer to observe the performance of Seller's operations and to perform such other due diligence as Buyer deems reasonably necessary.

**10. Employees of Seller.** Seller shall not dissuade its employees from becoming employees of the Buyer after Closing and will provide Buyer with copies of each employee file, including the appropriate pay plans, payroll records for the twelve (12) months prior to Closing, and all other employee information reasonably requested by Buyer. Seller will not solicit such employees to leave Buyer subsequent to the date of this Agreement and will not employ any current employee of Seller for a period of three (3) years after Closing. Seller and Buyer shall cooperate with each other with respect to all matters involving employee relations in connection with the transactions contemplated by this Agreement.

**11. Conditions Precedent to Closing.**

(a) The following conditions must be satisfied as conditions precedent to the obligation of Buyer to proceed with closing unless waived by Buyer:

(i) Buyer shall have entered into an employment agreement with Joseph Harms, substantially in the form annexed hereto and marked Exhibit 11(a)(1) (the "Employment Agreement") and a Non-competition Agreement with Joseph Harms and the Seller, substantially in the form annexed hereto and marked Exhibit 11(a)(2) (the "Non-competition Agreement");

(ii) Buyer obtaining the right to continue operating the Business at the Premises following the Closing, on a month-to-month lease, at a rental rate of \$1,000 per month, and such other terms as are acceptable to by Buyer in its reasonable discretion;

(iii) the completion prior to October 31, 1998 (the "Review Period") (including, without limitation, providing the Buyer and its designated representatives access for such purposes) of a satisfactory review by Buyer and/or its designated representatives of the assets, liabilities, operations and business of the Seller, and the giving of notice to the Seller within three (3) days of the end of the Review Period of the completion of the review herein provided and the results thereof;

(iv) the assignment by Seller to Buyer, on terms acceptable to Buyer, of Seller's rights and interests under those agreements identified on Schedule 11(a)(v);

(v) All local licenses and permits, building occupancy permit or other license, permit, certification, approval, or authority to transact business which are material to the conduct of business shall have been obtained by Buyer from any governmental body or agency which may have authority thereof. Seller agrees to cooperate and facilitate the obtaining of such approvals and permits by Buyer by executing such documents and transferring or releasing such rights as it may have which may be necessary to facilitate such ends, provided that Seller shall not be obligated to incur any additional cost or expense in connection therewith. Buyer covenants and agrees to diligently pursue such actions and to use best efforts to accomplish such actions prior to the Closing Date;

(vii) All insurance policies which Buyers deems are material to the conduct of business shall have been obtained by Buyer. Seller agrees to cooperate and facilitate the obtaining of such insurance policies. Buyer covenants and agrees to diligently pursue such actions and to use best efforts to accomplish such actions prior to the Closing Date;

(viii) There shall have been no material adverse change in the business, financial condition, business prospects or operations of Seller from the date of execution of this Agreement;

(ix) Seller shall have paid in full all lines of credit and other credit facilities granted to Seller; and

(x) The representations and warranties made by Seller and the Principal in this Agreement shall be true and correct in all material respects on and as of the Closing Date; Seller and the Principal shall have performed all covenants and obligations and complied with all conditions in all material respect required by this Agreement to be performed or complied with by Seller or the Principal, and Seller and the Principal shall execute and deliver to Buyer a certificate dated as of the Closing Date to the foregoing effect.

(b) The following conditions must be satisfied as conditions precedent to the obligation of Seller to proceed with closing unless waived by Seller:

(i) The conditions precedent to Buyer's obligation to close shall have been satisfied or waived by Buyer;

(ii) The completion of the Private Placement; and

(iii) The representations and warranties made by Buyer in this Agreement shall be true and correct on and as of the closing date; Buyer shall have performed all covenants and obligations and complied with all conditions required by this Agreement to be performed or complied with by Buyer, and Buyer shall execute and deliver to Seller a certificate dated as of the closing date to the foregoing effect.

**12. Representations and Warranties of Seller and Principal.** Seller and the Principal, jointly and severally, represent, warrant and agree, which representations, warranties and agreements shall be true and correct as of the closing and shall survive the closing for a period of twelve (12) months for each of the representations and warranties set forth below, except for subparagraph (h) which shall survive the closing for the applicable statutes of limitation, as follows:

(a) **Organization.** Seller is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation. Seller has the power to own its property and to carry on its business as and where such business is so conducted.

(b) **Authority to Consummate Transaction.** All corporate actions on the part of the Seller, its directors and stockholders, necessary for the authorization, execution, and delivery of this Agreement by Seller have been taken. All corporate actions on the part of the Seller, its directors and stockholders, necessary for the performance of this Agreement by Seller have been taken prior to or as of the Closing Date. The execution and delivery of this Agreement do not, and the consummation of the transactions contemplated hereby will not, violate any provision of Seller's Articles of Incorporation or By-laws, or any order, agreement, arbitration award, judgment or decree to which Seller or the Principal is subject. This Agreement constitutes the valid and binding obligation of Seller and the Principal and is enforceable in accordance with its terms.

(c) **Compliance With Laws.** Except as disclosed in Schedule 12(c) attached hereto, to the best of Seller's knowledge, information and belief, Seller is in compliance with the applicable rules and regulations of any federal or state agencies or municipalities having jurisdiction over its activities, and the applicable provisions of the laws of any such jurisdiction, and Seller has not received any notification that the Premises does not comply with building codes and other applicable local ordinances, rules and regulations.

(d) **No Litigation or Adverse Events.** Except as disclosed in Schedule 12(d) attached hereto, there is no suit, action, or legal, administrative, arbitration or other proceeding or governmental investigation affecting Seller or the Principal or any of Seller's Assets, pending or overtly threatened against Seller or the Principal, which might adversely affect any of Seller's or the Principal's obligations hereunder, nor is there any factual basis known to Seller or the Principal for any such suit, action, proceeding or investigation.

(e) **Title to Assets.** Seller has, and on the date of closing will have, good and marketable title to all of its Assets, free and clear of all mortgages, liens, pledges, charges or encumbrances of any nature whatsoever.

(f) **Condition of Certain Assets.** On the closing date, the tangible Assets shall be in good working condition and state of repair.

(g) **No Breach of Statute or Contract.** Neither the execution and delivery of this Agreement nor compliance with the terms and provisions of this Agreement on the part of Seller: (i) will breach any applicable statute or regulation of any governmental authority, domestic or foreign; or (ii) will at the closing date conflict with or result in a breach of any of the terms, conditions or provisions of any judgment, order, injunction, decree or any agreement or instrument to which Seller or the Principal is a party, or by which Seller or the Principal may be bound, or constitute a default thereunder, or result in the creation or imposition of any lien, charge, encumbrance or restriction of any nature whatsoever upon, or give to others any interest or rights, including rights of termination or cancellation in, or with respect to, any of Seller's Assets. The Seller is not in default under any agreement which is material to the operation of Seller's business and to the Seller's best knowledge, no other party is in material default of any agreement to which it is a party with the Seller.

(h) **Hazardous Substances.** To the best of Seller's and the Principal's knowledge, any handling, transportation, storage, treatment or usage of Hazardous Substances (as hereinafter defined) that has occurred on the Premises during Seller's occupancy has been in compliance with all applicable federal, state and local laws, regulations and ordinances. Seller and the Principal further represent and warrant that, to the best of their knowledge, no leak, spill, release, discharge, emission or disposal of Hazardous Substances has occurred on the Premises during Seller's occupancy and that to Seller's knowledge, the soil vapor on or under the Premises is free of Hazardous Substances. "Hazardous Substances" means any substance that is toxic, ignitable, reactive or corrosive and is regulated by any local government, the State of Florida or the United States Government. "Hazardous Substances" includes any and all material or substances that are defined as "hazardous waste", "extremely hazardous waste", or "hazardous substances" pursuant to federal, state or local government law.

(i) **Commitments.** Except as set forth in this Agreement or the Schedules annexed hereto, Seller has made no commitments to any customers for the delivery of any goods or services which would cause any customers to request or expect Buyer, after closing, to provide any goods or services to any such customer without payment to Buyer.

(j) **Contracts.** Schedule 12(j) completely lists the following contracts and other agreements to which the Seller is a party:

(i) Any agreement (or group of related agreements) for the purchase or sale of raw materials, commodities, supplies, products, or other personal property, or for the furnishing or receipt of services, the performance of which will extend over a period of more than 90 days, result in a loss to the Seller or involve consideration in excess of \$5,000;

(ii) Any agreement (or group of related agreements) under which it has created, incurred, assumed, or guaranteed any indebtedness for borrowed money, or any capitalized lease obligation, in excess of \$5,000 or under which it has imposed a security interest on any of the Assets;

(iii) Any other agreement or group of related agreements which both (i) involves consideration in excess of \$5,000, and (ii) a default or termination which could have a material adverse effect on the business, financial condition, operations, or results of operations of Seller.

All such contracts are valid, binding, and enforceable in accordance with their terms and are in full force and effect. There are no existing defaults by Seller under any such contracts and no act, event, or omission has occurred that, whether with or without notice, lapse of time, or both, would constitute a default thereunder.

(k) **Taxes**. All taxes, including without limitation, income, property, sales, use, franchise, added value, employees' income withholding and social security taxes, imposed by the United States or by any state, municipality, subdivision or instrumentality of the United States, or by any other taxing authority, which are due or payable by Seller, and all interest and penalties thereon, whether disputed or not (hereinafter, "Taxes"), have been paid in full, all tax returns required to be filed in connection therewith have been accurately prepared and duly and timely filed and all deposits required by law to be made by any Seller with respect to employees' withholding taxes have been duly made. Neither Seller nor the Principal has any tax deficiency or claim outstanding, proposed or assessed against it or him, and there is no basis for any such deficiency or claim.

(l) **Intellectual Property**. Seller owns or has the right to use pursuant to license, sublicense, agreement, or permission all Intellectual Property used by Seller in the operation of the business of the Seller as presently conducted. Each item of Intellectual Property owned or used by Seller immediately prior to the Closing hereunder will be owned or available for use by the Buyer on identical terms and conditions immediately subsequent to the Closing hereunder. Schedule 12(l) completely lists all trade names, trademarks, service marks, registrations and applications therefor used by Seller, and all domestic and foreign patents, pending patent applications and patent rights owned by Seller.

(m) **Inventory**. The inventory of Seller consists of raw materials and supplies, manufactured and purchased parts, goods in process, and finished goods, all of which will be transferred by Seller to Buyer "As Is." Immediately prior to closing, a representative of Buyer and a representative of Seller shall examine Seller's inventory and Buyer may exclude from the Assets purchased hereunder any inventory which Buyer determines to be below standard quality or in disrepair, nonsalable or obsolete and an appropriate adjustment shall be made to the purchase price for the fair value of such item or items. Such determination shall be made in accordance with customary industry standards. Any inventory not purchased by Buyer at the time of closing shall be removed from the Premises immediately following closing at Seller's sole cost and expense.

(n) **Permits and Licenses**. Schedule 12(n)(i) completely lists all franchises, approvals, 510(k)s, certifications, permits, and licenses held by Seller. Except as disclosed in Schedule 12(n)(ii), the Seller has all franchises, approvals, 510(k)s, certifications, permits, licenses and any similar authority necessary for the conduct of its business as now being conducted by it, the lack of which could materially and adversely affect the business, properties, prospects or financial condition of the Seller. The Seller is not in default in any material respect under any of such approvals, certifications, franchises, permits, licenses or other similar authority.

(o) **Brokerage**. No agent, broker or finder has been employed by Seller in connection with this Agreement or the transactions contemplated hereby. Seller agrees to indemnify and hold Buyer harmless from any claim for brokerage or other commissions, including costs and reasonable attorneys' fees, arising by reason of a breach of the foregoing representation and warranty.

(p) **Disclosures.** No representation or warranty by Seller or the Principal in this Agreement, nor any written statement, schedule or exhibit furnished or to be furnished by or on behalf of Seller or the Principal pursuant to this Agreement, nor any document or certificate delivered to Buyer pursuant to this Agreement, or in connection with actions contemplated hereby, contains or shall contain any untrue statement of a material fact or omits or shall omit to state a material fact necessary to make the statements contained therein not misleading.

(q) **Reliance.** Seller and the Principal have made the representations, warranties and agreements herein contained with the knowledge and expectation that Buyer is placing complete reliance thereon.

13. **Representations and Warranties of Buyer.** Buyer represents, warrants and agrees, which representations, warranties and agreements shall be true and correct as of the closing, as follows:

(a) **Organization.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has all requisite corporate power and authority to own, lease or hold its rights, properties and assets, and to conduct its business as it is now being conducted, to enter into this Agreement and to consummate the transactions contemplated hereby.

(b) **Authority to Consummate Transaction.** All corporate actions on the part of the Buyer, its directors and stockholders, necessary for the authorization, execution, delivery and performance of this Agreement by Buyer have been taken prior to or as of the Closing Date. The execution and delivery of this Agreement do not, and the consummation of the transactions contemplated hereby will not, violate any provision of Buyer's Certificate of Incorporation or By-laws, or any order, agreement, arbitration award, judgment or decree to which Seller or the Principals is subject. This Agreement constitutes the valid and binding obligation of Buyer and is enforceable in accordance with its terms.

(c) **No Breach of Statute or Contract.** Neither the execution and delivery of this Agreement nor compliance with the terms and provisions of this Agreement on the part of Buyer: (a) will breach any applicable statute or regulation of any governmental authority, domestic or foreign; or (b) will at the closing date conflict with or result in a breach of any of the terms, conditions or provisions of any judgment, order, injunction, decree or any agreement or instrument to which Buyer is a party, or by which Buyer may be bound, or constitute a default thereunder, or result in the creation or imposition of any lien, charge, encumbrance or restriction of any nature whatsoever upon, or give to others any interest or rights, including rights of termination or cancellation in, or with respect to, any of its obligations hereunder.

(d) **Private Placement.** Buyer is diligently pursuing the Private Placement and Buyer expects to close the Private Placement prior to November 15, 1998.

(e) **Disclosures.** No representations or warranties by Buyer in this Agreement, nor any written statement or certificate furnished, or to be furnished by Buyer pursuant to this Agreement, or in connection with the action contemplated hereby, contains or shall contain any untrue statement of material fact or omits, or shall omit to state a material fact necessary to make the statements not misleading.

**14. Post-Closing Adjustment For Uncollected Receivables.**

(a) Not later than the Closing Date, Seller shall deliver to Buyer a complete list of receivables from customers of Seller as of the Closing Date, setting forth the names, amounts, and invoice and other reference numbers for all such receivables. The customer receivables shall be subject to the further provisions of subsection (i) below.

(i) For 180 days after the Closing, Buyer shall make reasonable effort consistent with its customary practices to collect the receivables which have been assigned to Buyer as part of the Assets. Subject to subsection (ii) below, at the end of such 180 period, Buyer shall have the right to set off and deduct the full amount of such uncollected receivables against amounts due from Buyer under the Promissory Note. Buyer and Seller agree that in the collection of accounts receivable Buyer shall, for the purposes of this subsection (i), apply the amounts collected from a customer to the oldest receivables due from that customer, notwithstanding any contrary designation that may have been made by such customer, provided, however, Buyer need not make such application of payment in respect to any receivable due from a customer where payment of an invoice due from the customer is being specifically withheld by such customer, pending the resolution of a warranty claim made by the customer or where payment is being refused because the customer has returned goods which were included in such invoice; and

(ii) The 180 day period provided in (i) above shall be extended (x) for any receivable the nonpayment of which has been postponed by the customer pending the providing of warranty service, for the period during which Buyer is providing warranty service to such customer for the product or products subject to such receivable, and (y) for any receivable backed by an enforceable letter of credit, for so long as the letter of credit is enforceable by Buyer; provided, however, no extension under (x) or (y) shall be for more than 90 days.

(b) In the event Buyer has set off and deducted any uncollected receivables against amounts due from Buyer under the Promissory Note and thereafter receives payment for such receivable, it will immediately reapply the amount collected to the amounts due from Buyer under the Promissory Note.

(c) Any setoff adjustment under subsection (a) above shall be made by an adjustment to the principal of the Note and interest on such principal amount shall likewise be extinguished.



(d) The provisions of this Section 14 shall not be construed to modify or amend the rights of the Buyer under Section 15.

**15. Indemnification; Defense of Claims.**

(a) Seller and the Principal, jointly and severally, shall indemnify and defend and hold Buyer harmless from and against all claims, liabilities (excluding the Assumed Liabilities), damages, losses and expenses (including reasonable attorneys fees) of any kind or character resulting from, or relating to, or arising out of the ownership, operation or conduct of Seller's business, or obligations incurred by or on behalf of Seller prior to Closing, or the Excluded Liabilities or Retained Assets, or arising out of the breach of any representation, warranty or agreement made by the Seller or the Principal herein. Notwithstanding anything to the contrary contained in this subsection 15(a), Seller and the Principal shall have no obligation to indemnify the Buyer in respect of any of the foregoing until such time, if any, as amounts otherwise recoverable in connection with this subsection 15(a) shall exceed Ten Thousand and No/100 Dollars (\$10,000.00) in the aggregate (the "Basket"), whereupon Seller and the Principal shall be obligated to indemnify the Buyer with respect to all liabilities arising under this subsection 15(a) which exceed the Basket up to, but not exceeding Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) in the aggregate (the "Cap"); provided, however, that the Basket and the Cap shall not serve to limit, restrict, or exclude in any manner whatsoever the obligations of Seller and the Principal or the rights and remedies of the Buyer in connection with (i) any remedy of the Buyer other than, to the extent specifically set forth, the payment of money, (ii) any claim arising from a breach of a representation or warranty in Section 12, or (iii) any claims arising under Section 6 of this Agreement. In addition to any other remedies available to Buyer, Buyer shall have the right to set off and deduct against amounts due under the Note any payment made by Buyer or loss suffered by Buyer with respect to any of the foregoing indemnification obligations.

(b) Buyer shall indemnify and defend and hold Seller and the Principal harmless from and against all claims, liabilities, damages, losses and expenses (including reasonable attorneys fees) of any kind or character resulting from, or relating to, or arising out of the ownership, operation or conduct of Buyer's business, or obligations incurred by or on behalf of Buyer after Closing, or arising out of the breach of any representation, warranty or agreement made by the Buyer herein. Notwithstanding anything to the contrary contained in this subsection 15(b), Buyer shall have no obligation to indemnify the Seller and the Principal in respect of any of the foregoing until such time, if any, as amounts otherwise recoverable in connection with this subsection 15(b) shall exceed the Basket, whereupon Buyer shall be obligated to indemnify the Seller and the Principal with respect to all liabilities arising under this subsection 15(b) which exceed the Basket up to, but not exceeding the Cap; provided, however, that the Basket and the Cap shall not serve to limit, restrict, or exclude in any manner whatsoever the obligations of Buyer or the rights and remedies of the Seller and the Principal in connection with (i) any remedy of the Seller and the Principal other than, to the extent specifically set forth, the payment of money, (ii) any claim arising from a breach of a representation or warranty in Section 13, or (iii) any claims arising under Section 5 of this Agreement.

(c) Promptly, but in any event not later than 30 calendar days, after receipt by Seller or Principal, on the one hand, or Buyer, on the other hand (in any such case, the "Beneficiary"), of notice of any claim or potential claim or the commencement of any action by any person that is not a party to this Agreement (a "Third Party Claim"), which could give rise to a right to indemnification pursuant to Section 15(a) or (b), the Beneficiary shall give the party who may become obligated to provide indemnification hereunder (the "Indemnitor") written notice describing the Third Party Claim in reasonable detail.

(d) If the Indemnitor acknowledges in writing that it would be required to indemnify the Beneficiary against a Third Party Claim which is the subject of a notice provided pursuant to subsection 15 (c), then the Indemnitor shall have the right, at its option, to participate in or, by giving written notice to the Beneficiary, to elect to assume the defense of such Third Party Claim, at the Indemnitor's own expense and by its own counsel (who shall be reasonably satisfactory to the Beneficiary). If the Indemnitor shall undertake to assume the defense of any Third Party Claim, it shall promptly notify the Beneficiary of its intention to do so, and the Indemnitor shall not be liable for any attorney's fees and expenses subsequently incurred by the Beneficiary in connection with the defense thereof; provided, however, that the Indemnitor has taken reasonable steps necessary to defend diligently such Third Party Claim. If the Indemnitor fails to promptly assume the defense of the Third Party Claim or if it fails to take reasonable steps to defend diligently such Third Party Claim, the Beneficiary may assume its own defense, and the Indemnitor shall be liable for all reasonable costs or expenses paid or incurred in connection therewith. The Beneficiary shall cooperate fully with, and provide appropriate documentation as reasonably requested by the Indemnitor and its counsel in the compromise of, or defense against, any such Third Party Claim. In any event, the Beneficiary shall have the right, at its own expense except as otherwise provided in this Section 15, to participate in the defense of such Third Party Claim.

(e) The Beneficiary may at any time notify the Indemnitor of its intention to settle or compromise any Third Party Claim which is the subject of notice provided pursuant to subsection 15(c), but shall not settle or compromise such Third Party Claim without the consent of the Indemnitor. Any settlement or compromise of any Third Party Claim in accordance with the preceding sentence, or any final judgment or decree entered on or in any Third Party Claim which the Indemnitor did not assume the defense of in accordance herewith, shall be deemed to have been consented to by, and shall be binding upon, the Indemnitor as fully as if the Indemnitor had assumed the defense thereof and a final judgment or decree had been entered in such Third Party Claim, or with regard to such Third Party Claim, by a court of competent jurisdiction for the amount of such settlement, compromise, judgment or decree. If the Beneficiary adjusts, settles or compromises any Third Party Claim without the prior written consent of the Indemnitor, the Beneficiary shall thereby waive any right to indemnity therefor by the Indemnitor.

(f) Any claim by a Beneficiary on account of damages that does not result from Third Party Claim (a "Direct Claim") shall be asserted by giving the Indemnitor reasonably prompt written notice thereof, but in any event not later than 30 calendar days after the Beneficiary becomes aware of such Direct Claim. The remedies available to the Beneficiary for any Direct Claim shall

remain subject to the applicable terms and provision of this Section.

(g) A failure to give timely notice or to include any specified information in any notice as provided in this Section will not affect the rights or obligations of any party hereunder except and only to the extent that as a result of such failure, any party which was entitled to receive such notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise damaged as a result of such failure.

**16. Default.** If any party shall be in default of any of its obligations hereunder and fails to correct the same within fifteen (15) days of the receipt of written notice given to such defaulting party by the other party, then if such default is continuing:

(a) If Seller or the Principal shall default in any of their material obligations hereunder, Buyer, at Buyer's option, shall be entitled to (i) terminate this Agreement by giving written notice to Seller, whereupon this Agreement shall be deemed to be terminated as of the date of such notice, and thereupon the parties shall have no further liability to the other hereunder, (ii) waive such default and proceed to Closing pursuant to the terms and provisions of this Agreement, or (iii) pursue against Seller and the Principal whatever rights Buyer may have at law or in equity, including, without limitation, the right to specific performance or the recovery of damages including court costs, interest and legal fees.

(b) If Buyer shall default in any of Buyer's material obligations hereunder, Seller, at Seller's option, shall be entitled to (i) terminate this Agreement by giving written notice to Buyer, whereupon this Agreement shall be deemed to be terminated as of the date of such notice, and thereupon the parties shall have no further liability to the other hereunder, (ii) waive such default and proceed to Closing pursuant to the terms and provisions of this Agreement, or (iii) pursue against Buyer whatever rights Seller may have at law or in equity, including, without limitation, the right to specific performance or the recovery of damages including court costs, interest and legal fees.

(c) A default by Buyer under this Agreement or under the Note or the Non-Competition Agreement, that continues beyond the applicable cure period, shall be considered a default by Buyer with respect to all such agreements entitling the Seller and Mr. Harms to exercise any and all remedies to which they are entitled in accordance with the terms and conditions of such agreements.

**17. Covenants.**

(a) After the Closing, and for a period not to exceed 2 years, Seller shall from time to time at Buyer's request and expense for any out-of-pocket costs, including reasonable attorneys' fees, execute and deliver to Buyer or cause to be executed and delivered to Buyer such other action as Buyer may reasonably request so as more effectively to sell, assign and transfer to Buyer title to and possession of the Assets as provided in this Agreement or otherwise to consummate the transactions contemplated by this Agreement.

(b) At Buyer's request following the Closing, Seller shall change Seller's name to a name that does not include "NIT" or "Needle & Infusion Technologies" or variations thereof.

(c) Seller acknowledges and agrees that the Note and shares of Class A Common Stock of Buyer ("Common Stock") which may be issued upon exercise of Seller's option to purchase Common Stock under this Agreement, have not been, and will not be registered under the Securities Act of 1933, as amended (the "Act") or under the securities registration laws of any state, and as a condition precedent to the obligation of Buyer to deliver any shares of Common Stock, Seller shall cooperate fully with Buyer to permit deliverance of any such shares of Common Stock without registration under the Act or any applicable state securities registration laws.

(d) The parties agree that if prior to payment of the Note in full the term of Principal's employment with the Buyer is not extended by the Buyer in accordance with the terms of the Employment Agreement, or the Principal's employment with the Buyer is terminated without cause, then at the option of the Seller, and provided the Note is still held by Seller, the entire unpaid balance of the Note shall be accelerated and shall be due and payable within 90 days of the date of termination of employment.

**18. Miscellaneous.**

(a) **Risk of Loss.** Seller shall assume all risk of loss due to fire or other casualty up to the time of closing. In the event of any loss which would materially impair the value of the Assets being transferred hereunder, Buyer shall have the right to decline to proceed with the closing and thereupon this Agreement shall be terminated without further liability on the part of any party hereto.

(b) **Notice.** Whenever notice is to be given under the terms of this Agreement, such notice shall be deemed to have been given when received, if delivered by hand, or on the date mailed when enclosed in an envelope having the proper postage, addressed as set forth herein to the party or person to receive notice, sent by certified mail, return receipt requested and deposited at a U.S. Post Office. Notice shall be addressed as follows:

If to Seller or the  
Principal: N.I.T., Inc.  
Attn: Joseph Harms  
390 Scarlet Boulevard  
Oldsmar, Florida 34689

With a copy to: Jim Schwartz, Esquire  
416 Drew Street  
Clearwater, Florida 33755

If to Buyer: Avid Medical, Inc.  
Attention: Michael Sahady  
3204 Ironbound Road  
Suite D  
Williamsburg, VA 23188

With a copy to: Surovell, Jackson, Colten & Dugan, P.C.  
Attention: G. Donald Markle, Esquire  
4010 University Drive  
Suite 200  
Fairfax, Virginia 22030

or such other address as Seller, Principal, or Buyer may provide by like notice to the other parties or persons to this Agreement.

(c) **Law Governing.** This Agreement shall be governed by, construed, and enforced under the laws of the State of Florida. The parties hereto submit to the jurisdiction of the courts of Pinellas County, Florida in any suit, action, or proceeding arising out of or relating to this Agreement.

(d) **No Other Agreement.** This Agreement, together with the Exhibits and Schedules hereto, sets forth the entire agreement and understanding between the parties with respect to the transactions contemplated hereby and supersedes all prior agreements, arrangements and understandings which led to the subject matter hereof. This Agreement may not be changed, modified or terminated, except by agreement in writing, signed by all of the parties hereto.

(e) **Waiver.** Failure of any party at any time or times to require performance of any provision hereof shall in no way affect the right of such party at a later time to enforce the provision. No waiver by either party of any condition or the breach of any term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed a further or continuing waiver of any condition, term, covenant, representation or warranty of this Agreement. Any change of this Agreement shall be made only in writing and executed by the parties sought to be charged thereby.

(f) **Parties in Interest.** All of the terms, covenants, representations, warranties and conditions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their heirs, executors, administrators, respective successors and assigns. Wherever used herein the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all other genders.

(g) **Headings.** The headings in the sections and paragraphs of this Agreement are inserted for convenience only and shall not constitute a part hereof.

(h) **Exhibits and Schedules.** The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof. Schedules to this Agreement are identified by reference to the section or subsection in which the information to be set forth or disclosed in such schedule is first particularly described. Each of such schedules shall be initialed by a representative of Seller and a representative of Buyer and shall be updated by Buyer and Seller through the Closing Date.

(i) **Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

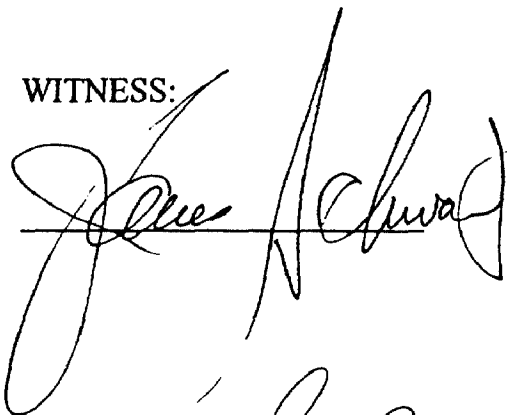
(j) **Time is of the Essence.** In the performance of each of the obligations of Seller, the Principal and Buyer hereunder, time is of the essence.

(k) **Survival.** All representations, warranties and covenants contained herein or made in writing by any party in connection herewith shall, in accordance with their respective terms, survive the execution and delivery of this Agreement and the consummation of any of the transactions contemplated hereby.

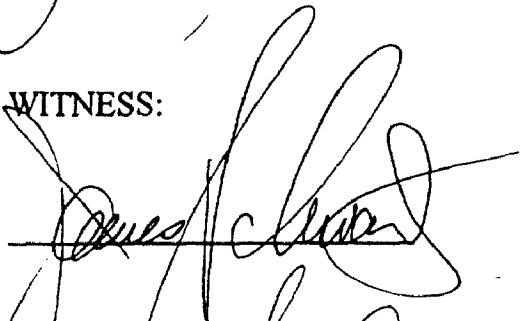
[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the year and day first above written.

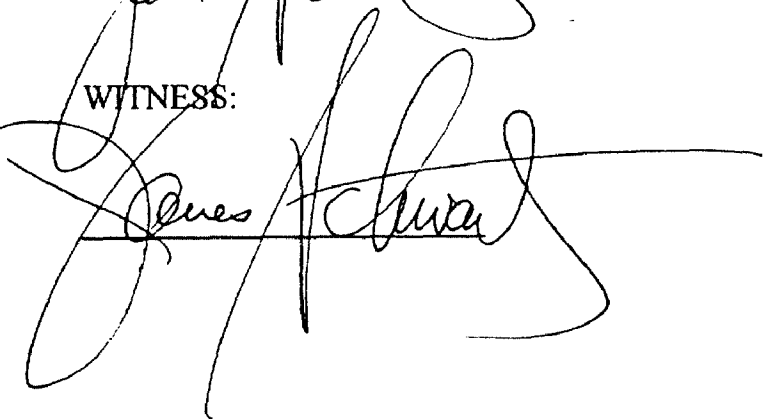
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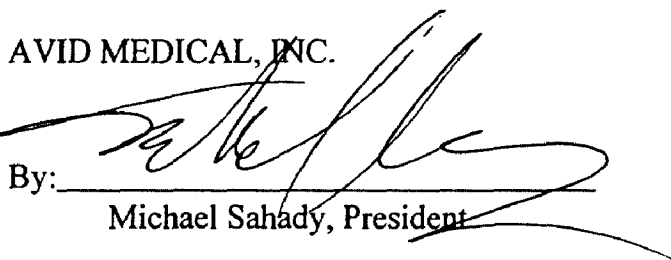
  
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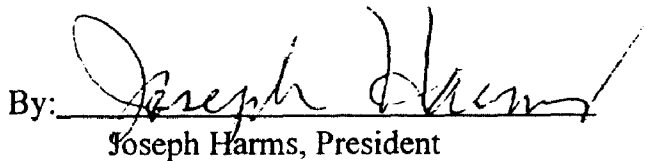
BUYER:

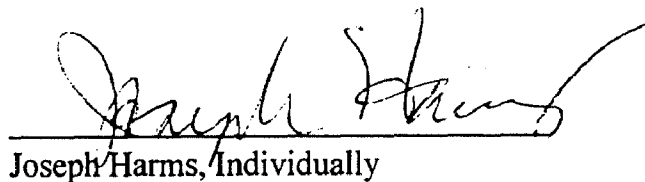
AVID MEDICAL, INC.

  
By: \_\_\_\_\_  
Michael Sahady, President

SELLER:

NIT, INC.

  
By: \_\_\_\_\_  
Joseph Harms, President

  
\_\_\_\_\_  
Joseph Harms, Individually

LARSON & LARSON, P.A.

ATTORNEYS AT LAW  
Practicing Domestic & International  
Patent Trademark & Copyright Law  
Trial and Appellate Litigation

H. WILLIAM LARSON  
HERBERT W. LARSON  
ALSO ADMITTED IN DELAWARE AND THE DISTRICT  
OF COLUMBIA AND REGISTERED TO PRACTICE  
BEFORE THE U. S. PATENT AND TRADEMARK  
OFFICE. (REG. NO. 21008).

JAMES E. LARSON  
REGISTERED TO PRACTICE BEFORE THE  
U. S. PATENT AND TRADEMARK OFFICE  
(REG. NO. 37867).

11199-69th STREET NORTH  
LARGO, FL 33773-5504  
727-546-0660  
FAX 727-545-1595

August 16, 2002

**Box Assignments**

Commissioner of Patents & Trademarks  
Washington, DC 20231

RE: Trademark Assignment for "*Regaines*"  
Registration No.: 2,023,387  
Our Ref: 690.5

Dear Sir:

Enclosed for filing is a fully completed PTO-1594 Recordation Form Cover Sheet. Enclosed are the following:

1. PTO-1594 Recordation Form Cover Sheet;
2. Supporting Documentation;
3. Deposit Account- 12-0551 for \$40.00; and
4. Self-addressed post card acknowledging receipt.

Kindly direct all correspondence to the undersigned attorney who represents assignee. The Commissioner is authorized to deduct the \$40.00 file fee to our deposit account no. 12-0551.

Respectfully submitted,

LARSON & LARSON, P.A.



H. William Larson

HWL/ml  
Enclosures

Date of Deposit: August 16, 2002 via U.S. First Class Mail

I hereby certify that the above mentioned trademark application and enclosures are being deposited with the United States Postal Service "U.S. First Class Mail" and is addressed to the Washington, D.C. address mentioned above.



H. William Larson

TRADEMARK  
REEL: 002571 FRAME: 0257



# SCHEDULE 12 (I)

## INTELLECTUAL PROPERTIES

### 510(k)s

1. k983218 Automatic cutting biopsy needle (approval pending)
2. k972593 Aldrete epidural
3. k971645 Metal and plastic hub spinal needles (with and without introducers)
4. k945967 Pencil point spinal needles
5. k921886A Radionuclide seed needles
6. k854816 Epidural needle
7. k880181 Epidural trays
8. k884792 Vascular access point huber needles

### Patents

1. Number Des. 378,130 Universal hub for an anethesia needle

### Trademarks

1. Trademark Registration No. 2,023,387 Mark "Reganes"  
registration date: December 17, 1996

## **EXHIBITS AND SCHEDULES**

Exhibit 5(a) - April 30 Balance Sheet

Attached hereto

Exhibit 7(c)(ii) - Promissory Note

Attached hereto

Exhibit 11(a)(1) - Joseph Harms Employment Agreement

Attached hereto

Exhibit 11(a)(2) - Joseph Harms Non-competition Agreement

Attached hereto

The parties agree that the following Exhibits and Schedules shall be prepared by Seller on or prior to October 31, 1998:

Schedule 4 - Contracts in Process

Exhibit 11(a)(v) - Mandatory Contracts to be Assigned

Schedule 12(d) - Litigation or Adverse Events

Schedule 12(j) - Extraordinary Contracts

Schedule 12(l) - Intellectual Property

Schedule 12(n)(i) - Permits and Licenses

Schedule 12(n)(ii) - Permits and Licenses (Exception)

The parties agree that the following Exhibit shall be prepared by Seller and Buyer on or prior to October 31, 1998:

Exhibit 7(c) - Purchase Price Allocation