FORM B10 (Official Form 10) (12/03)

UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE

PROOF OF CLAIM

Name of Debtor: Women First HealthCare, Inc

Case Number: 04-11278 (MFW)

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (The person or other entity to whom the debtor owes money or property)
Whitney Private Debt Fund

Name and address where notices should be sent
Whitney Private Debt Fund
177 Broad Street
Stamford, Connecticut 06901
Attention: Robert M. Williams
-and-
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Attention: Alan W. Kornberg
Telephone number: 212-373-3000

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check box if you have never received any notices from the bankruptcy court in this case.

☐ Check box if the address differs from the address on the envelope sent to you by the court.

THIS SPACE IS FOR COURT USE ONLY

Account or other number by which creditor identifies debtor: N/A

Check here if this claim
☐ Replaces / ☐ amends a previously filed claim, dated

1 **Basis for Claim**
- ☐ Goods sold
- ☐ Services performed
- ☑ Money loaned *See Attachment
- ☐ Personal injury/wrongful death
- ☐ Taxes
- ☑ Other *See Attachment
- ☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)
- ☐ Wages, salaries, and compensation (fill out below)
  Last four digits of SS #
  Unpaid compensation for services performed
  From to

2 **Date debt was incurred** *See Attachment

3 **If court judgment, date obtained** N/A

4 **Total Amount of Claim at Time Case Filed** **Not less than $7,528,437.50 in the aggregate principal amount, plus additional undetermined amounts, including but not limited to claims for or relating to pre-petition and post-petition interest, fees, indemnification and attorneys' fees in amounts to be determined and other obligations and duties of Debtor set forth in the Pre-Petition Loan Documents** See Attachment

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below

☑ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges. See Attachment

5 **Secured Claim**
- ☑ Check this box if your claim is secured by collateral (including a right of setoff)

Brief Description of Collateral
- ☐ Real Estate ☐ Motor Vehicle
- ☑ Other *See Attachment

Value of Collateral: *See Attachment

Amount of arrearage and other charges at time case filed included in secured claim, if any: *See Attachment

6 **Unsecured Nonpriority Claim $**_____
- ☐ Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority

7 **Unsecured Priority Claim**
- ☐ Check this box if you have an unsecured priority claim

Amount entitled to priority

Specify the priority of the claim
- ☐ Wages, salaries, or commissions (up to $4,650), earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3)
- ☐ Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4)
- ☐ Up to $2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6)
- ☐ Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7)
- ☐ Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8)
- ☐ Other. Specify applicable paragraph of 11 U.S.C. § 507(a)(____)

Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7 **Credits**. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8 **Supporting Documents**. *Attach copies of supporting documents*, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. See Attachment

9 **Date-Stamped Copy**: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

THIS SPACE IS FOR COURT USE ONLY

FILED

AUG 27 2004

BMC

Date: August 26, 2004

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)

Signature: Michael C. Salvator

Name: Michael C. Salvator, Chief Financial Officer

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Women First Healthcare Inc

00122

ATTACHMENT TO PROOF OF CLAIM OF
WHITNEY PRIVATE DEBT FUND

1 On April 29, 2004 (the "Petition Date"), Women First HealthCare, Inc (the "Debtor") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U S C §§ 101 *et seq* (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court")

2 On June 25, 2004, the Bankruptcy Court entered that certain Order Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof (Docket No 203) (the "Bar Date Order"), which, inter alia, established August 31, 2004, as the deadline by which any creditors of the Debtor must file proofs of claim in the Debtor's chapter 11 case

I PRELIMINARY STATEMENT

3 Nature of Claim As of the Petition Date, the Debtor was indebted and/or liable to Whitney Private Debt Fund ("Claimant") for no less than the principal amount of $7,528,437 50, together with interest thereon, plus fees and costs, including professional fees and costs, based upon amounts outstanding under (a) that certain Senior Secured Note due September 30, 2005 dated June 25, 2002, executed by the Debtor and delivered to Claimant in consideration of a loan made by Claimant to the Debtor in such amount (the "Senior Secured Note") and (b) that certain Note and Warrant Purchase Agreement dated June 25, 2002 (as amended and supplemented from time to time, and collectively with the Senior Secured Note and its related instruments and agreements, the "Pre-Petition Agreements"), by and among CIBC WMC Inc , Whitney Private Debt Fund and J H Whitney Mezzanine Fund, L P (the "Pre-Petition Lenders") and the Debtor,

pursuant to which the Pre-Petition Lenders, including Claimant, made loans to the Debtor All obligations arising under or evidenced by the Pre-Petition Agreements and the instruments and documents executed in connection with such agreements shall hereinafter be referred to as the "Pre-Petition Obligations "

4 The Pre-Petition Obligations consist of, but are not limited to the following

(a) loans made in the aggregate principal amount of not less than $7,528,437 50[1],

(b) interest on such loans through the Petition Date in the amount of $312,524 19[2],

(c) interest since the Petition Date through August 13, 2004 in the amount of $278,421 71[3] and accruing at a rate of $728 74 per diem thereafter[4],

(d) amounts owing to Claimant described in paragraph 10 below including, but not limited to, Fees and Costs (as defined therein) in an as yet undetermined amount, and

(e) any and all other Pre-Petition Obligations, including, but not limited to obligations set forth in, arising under or relating to the Pre-Petition Agreements

5 Security Agreement As security for the Pre-Petition Obligations, the Debtor granted to CIBC WMC, Inc , as collateral agent (in such capacity, the "Collateral Agent"), for the ratable benefit of Claimant, security interests in and liens

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1 Such amount includes $28,437 50 of payable-in-kind ("PIK") interest capitalized on March 31, 2004

2 Such amount includes $28,437 50 of PIK interest capitalized on March 31, 2004 and $18,052 95 of PIK interest accrued but not yet capitalized

3 Such amount includes $20,290 04 of PIK interest capitalized as of June 30, 2004 and $17,024 41 of PIK interest accrued and not yet capitalized

upon, among other property, certain of the Debtor's then-owned and thereafter acquired property and interests in property as more specifically set forth in the Security Agreement dated June 25, 2002 (as subsequently amended, the "Amended and Restated Security Agreement" and collectively with the Pre-Petition Agreements, the "Pre-Petition Loan Documents"), and other documents executed in connection with the Pre-Petition Agreements (the "Collateral Agent's Liens") As described in the proof of claim filed by it simultaneously herewith, the Collateral Agent's Liens are duly perfected liens and security interests granted to the Collateral Agent by the Debtor for the benefit of Claimant through the filing and recordation of financing statements and other appropriate documents and instruments in the relevant jurisdictions, including recordation of notices of security interest in the United States Patent and Trademark Office, prior to the Petition Date The property subject to the liens and security interests described in this paragraph shall hereinafter be referred to as the "Collateral "

6 Secured Claims The claims of Claimant against the Debtor arising out of or relating to the Pre-Petition Obligations are secured claims for which (a) the Collateral Agent for the benefit of Claimant has been granted security interests in and liens upon substantially all the assets, whether tangible or intangible, of the Debtor, pursuant to the Pre-Petition Loan Documents, including, but not limited to, the Senior Secured Note, the Note and Warrant Purchase Agreement, the Security Agreement and the Amended and Restated Security Agreement and (b) the Collateral Agent for the benefit of Claimant has been granted additional security interests in and liens upon the property of the Debtor pursuant to the Amended Final Order (1) Authorizing Post

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4 Pursuant to the Pre-Petition Agreements, the per diem interest rate increases on a quarterly basis

Petition Financing on a Secured and Super-Priority Basis Pursuant to Sections 364(c) and (d) of the Bankruptcy Code, (2) Authorizing Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code and (3) Granting Adequate Protection Pursuant to Sections 363 and 364 of the Bankruptcy Code, entered by the Bankruptcy Court on June 3, 2004 (the "Final DIP Order") whereby the Debtor granted to the Collateral Agent, for benefit of Claimant (a) replacement security interests in and liens upon, all of the DIP Collateral (as defined therein) of the same type constituting Collateral and (b) a perfected junior lien on all unencumbered property and interests, real and personal, tangible and intangible, of the Debtor, whether now owned or hereafter acquired, all products and proceeds thereof, and accessions thereto, including, without limitation, all of the Debtor's rights and interests, if any, in and under that certain Distribution and License Agreement between Women First Healthcare, Inc and Laboratories Fournier S A dated July 19, 1999 (as amended from time to time), all inventory, accounts receivable, general intangibles, equipment, notes, documents, chattel paper, cash and interests in real property (whether owned or leased), but excluding Avoidance Actions (as defined in the Final DIP Order) (the "Adequate Protection Liens") The Adequate Protection Liens are junior in priority to the liens of the DIP Lenders (as defined in the Final DIP Order), but superior to all other liens on the DIP Collateral (other than Existing Liens having priority over the DIP Agent's Liens and the Carve-Out and shall not extend or attach to the Professional Fee Reserve or the Professional Fee Carve-Out) (all as defined in the Final DIP Order) The Adequate Protection Liens secure the amounts necessary to adequately protect the interests of the Collateral Agent, for the benefit of the Pre-Petition Lenders, including Claimant, to the extent of their interests in the Collateral as a result of the priming of the

Collateral Agent's Liens and for the use of their respective interests in the Collateral (including Cash Collateral) to the extent of any diminution in value as a result thereof

II FACTUAL BACKGROUND

A Obligations Under Loan Documents

7 The consideration (or ground of liability) for the Pre-Petition Obligations and the indebtedness owing to Claimant described in this Proof of Claim is the loan, extension of credit and other financial accommodations made by Claimant pursuant to the Pre-Petition Agreements and the Pre-Petition Loan Documents, including, but not limited to the following

8 Principal Amount As of the Petition Date, the Debtor was indebted to Claimant in respect of the Senior Secured Note in an aggregate principal amount of not less than $7,528,437 50[5] (the "Loans") Since the Petition Date, the Debtor has sold certain of the Collateral and pursuant to paragraph 14 of the Final DIP Order has paid over a portion of the net sale proceeds of the Collateral to the Collateral Agent of which $6,189,263 84 has been applied first in reduction of the pre-petition interest due on the Loans and then to the outstanding principal of the Loans Accordingly, the amount of $1,576,501 01 as of August 13, 2004 in respect of the Loans remains outstanding and due and owing by the Debtor to Claimant

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[5] Pursuant to the Order Modifying Promissory Note Entered Into By and Between the Debtor and Saundra Pelletier (f/k/a) Saundra Childs, entered by the Bankruptcy Court on June 25, 2004, Claimant has reduced the amount of its pre-petition secured claim under the Pre-Petition Agreements by $93,750

9 Interest Pursuant to the Pre-Petition Agreements, the Debtor agreed to pay interest on the aggregate unpaid principal balance owed to Claimant on the Loans at the rate(s) set forth in the Pre-Petition Agreements Interest on all amounts due to Claimant with respect to the Loans as of the Petition Date has accrued in an amount of not less than $312,524 19, for which the Debtor is responsible for payment [6] The Debtor is liable further to Claimant for post-petition interest provided for under the Pre-Petition Loan Documents and applicable law and, accordingly, Claimant reserves all rights to seek payment thereof As of August 13, 2004, the amount of such post-petition interest is not less than $278,421 71 In addition to the foregoing, the Debtor is liable to Claimant for interest on the claims described herein to the extent such interest is allowable under the Bankruptcy Code

10 Costs, Expenses and Attorneys' Fees Pursuant to the Pre-Petition Loan Documents, the Debtor agreed to pay all costs and expenses of Claimant, including without limitation attorneys' fees of Claimant incurred prior to and after the Petition Date to the extent provided in the Pre-Petition Loan Documents (collectively, "Fees and Costs") The Fees and Costs include, but are not limited to, the attorneys' fees and costs incurred in connection with or relating to (a) enforcement of (or determining whether or how to enforce) any rights under the Pre-Petition Agreements and Pre-Petition Loan Documents and (b) the costs and expenses incurred in any bankruptcy case Prior to the Petition Date, un-reimbursed Fees and Costs due to the Pre-Petition Lenders have been incurred in the amount of $228,420 61 for which Claimant is liable for its pro rata share

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6 Such amount was paid by the Debtor on or about July 28, 2004, from the net sale proceeds of certain Collateral pursuant to paragraph 14 of the Final DIP Order

of such amount Since the Petition Date, Fees and Costs have been incurred and continue to be incurred This Proof of Claim is without prejudice to the right of Claimant to claim such fees and other expenses as administrative expenses in this case pursuant to section 503(b) of the Bankruptcy Code, or otherwise

11 Perfection of Liens in the Collateral Pursuant to, inter alia, the Amended and Restated Security Agreement, the Loans and other obligations of the Debtor under the Pre-Petition Loan Documents are secured by the Collateral The Collateral Agent holds properly perfected first priority security interests in and liens upon the Collateral for the benefit of Claimant based upon, among other things, the filing and recordation of appropriate Uniform Commercial Code Financing Statements and other appropriate documents and instruments in the relevant jurisdictions, including recordation of notices of security interest in the United States Patent and Trademark Office, prior to the Petition Date, and the Collateral Agent having taken possession of the Collateral, as the case may be

12 Liens Not Subject to Challenge Pursuant to the Final DIP Order, the deadline for parties in interest, except for the Official Committee of Unsecured Creditors, to commence any actions challenging whether the Collateral Agent's liens were duly perfected under applicable non-bankruptcy law, or to commence actions under section 544 of the Bankruptcy Code to avoid Claimant's interests in such Collateral based upon the purported failure to properly perfect such interests, expired on July 6, 2004 Accordingly, except for the rights, if any, of the Official Committee of Unsecured Creditors under paragraph 21 of the Final DIP Order, which will expire on September 10, 2004, the parties in interest have waived their rights to (a) contest the validity, perfection,

priority, enforceability, amount and avoidability of the liens and security interests of the Collateral Agent and the Pre-Petition Lenders in and to the Pre-Petition Collateral, or (b) assert any claim or cause of action against the Collateral Agent, the Pre-Petition Lenders in their respective capacities as such, together with their respective agents, attorneys, advisors, employees, heirs, executors, administrators, officers, directors, successors and assigns, from any and all claims, causes of action and remedies (whether under the Bankruptcy Code or other applicable law) arising out of, based upon or related to the Pre-Petition Agreement, the Pre-Petition Loan Documents (and the transactions contemplated thereunder), the Pre-Petition Obligations and the Pre-Petition Collateral securing any of the foregoing or the Collateral Agent's Liens, as the case may be

13 Adequate Protection Liens In addition, the Pre-Petition Obligations are secured by adequate protection liens granted and perfected pursuant to the Final DIP Order

B Supporting Documents

14 In support of this Proof of Claim, Claimant has attached as Exhibit 1 hereto an appendix of supporting documents that includes the following

A Senior Secured Note No 2 due September 30, 2005 dated June 25, 2002 in the amount of $7,500,000,

B Note and Warrant Purchase Agreement dated June 25, 2002,

C Security Agreement dated June 25, 2002,

D Amended and Restated Security Agreement dated May 12, 2003, and

E The Final DIP Order entered June 3, 2004

III RESERVATION OF RIGHTS

15 Claimant has filed this Proof of Claim under compulsion of the Bar Date Order and to protect Claimant from forfeiture of its claim against the Debtor by reason of such Bar Date Order Claimant reserves the right to amend, clarify and/or supplement this Proof of Claim, including any schedules or exhibits, at any time, including after the bar date, in any manner, including, but not limited to, to (a) correct, increase, or amend the amount of the sums referred to herein, (b) add or amend documents and other information, and to describe further the claims asserted herein, (c) file additional proofs of claim that may be duplicative in respect of the Pre-Petition Agreements or any other indebtedness, obligations, or liability of the Debtor to Claimant, (d) contest the validity, priority, and extent of any other purported liens and security interests other than those described herein, (e) assert a priority, security interest, or similar right with respect to the claims asserted herein and (f) fix the amount of interest, fees and expenses due Claimant, and/or to file additional proofs of claim for any additional claim which may be based on the same or additional documents or grounds of liability or file a request for payment of administrative expenses in accordance with sections 503 and 507 of the Bankruptcy Code

16 The filing of this Proof of Claim is not and shall not be deemed or construed as (a) a waiver or release of Claimant's rights against any person, entity, or property, or a waiver of the right to compel the Debtor to return property of Claimant currently in the possession of the Debtor, (b) a consent by Claimant to the jurisdiction of this Court or any other court with respect to proceedings, if any, commenced in any case against or otherwise involving Claimant, (c) a waiver or release of Claimant's right to

trial by jury in this Court or any other court in any proceeding as to any and all matters so triable herein, whether or not the same be designated legal or private rights or in any case, controversy, or proceeding related hereto, notwithstanding the designation or not of such matters as "core proceedings" pursuant to 28 U S C § 157(b)(2), and whether such jury trial right is pursuant to statute or the United States Constitution, (d) a consent by Claimant to a jury trial in this Court or any other court in any proceeding as to any and all matters so triable herein or in any case, controversy, or proceeding related hereto, pursuant to 28 U S C § 157(e) or otherwise, (e) a waiver or release of Claimant's right to have any and all final orders in any and all non-core matters or proceedings entered only after *de novo* review by a United States District Court Judge, (f) a waiver of the right to move to withdraw the reference, or otherwise to challenge the jurisdiction of this Court, with respect to the subject matter of this proof of claim, any objection or other proceeding commenced with respect thereto or any other proceeding commenced in this case against or otherwise involving Claimant or to assert that the reference has already been withdrawn with respect to the subject matter of this proof of claim, any objection or other proceeding commenced with respect thereto or any other proceeding commenced in this case against or otherwise involving Claimant, (g) an election of remedies, or (h) a waiver of any past, present or future defaults or events of default under any Pre-Petition Loan Document Claimant specifically preserves all of its procedural and substantive defenses and rights with respect to any claim that may be asserted against Claimant by the Debtor or by any trustee or other representative of its estate

17 The Pre-Petition Obligations are not subject to any setoff or counterclaim

18 The Pre-Petition Obligations constitute secured claims To the extent the Collateral is insufficient to satisfy in full the Pre-Petition Obligations, Claimant holds administrative expense claims entitled to priority under section 507(b) of the Bankruptcy Code and the Final DIP Order Otherwise Claimant holds general unsecured claims against the Debtor, this Proof of Claim is filed as an unsecured claim as to any such deficiency In addition to all other rights, Claimant reserves all rights under section 1111(b) of the Bankruptcy Code

19 Claimant does not waive any right to claim specific assets, any rights of set-off, recoupment or counterclaim, or any other right, rights of action, causes of action, or claims, whether existing now or hereinafter arising, that Claimant has or may have against the Debtor, or any other person or persons, and Claimant expressly reserves any and all such rights

20 Nothing contained in this Claim shall be construed as limiting Claimant's rights, remedies and interests under the Pre-Petition Loan Documents To the extent that there is a conflict between anything contained in this Claim and the Pre-Petition Loan Documents, the terms and conditions of the Pre-Petition Loan Documents shall govern and such documents are incorporated herein by reference

21 Nothing herein shall be deemed to waive, estop or derogate from the rights of Claimant under the Final DIP Order This Proof of Claim is also without prejudice to any and all of Claimant's rights, claims and defenses under the Bankruptcy Code or otherwise, including, but not limited to, the right to vote on any plan in the Debtor's chapter 11 case

22 With respect to any unliquidated claim, which claim cannot be reasonably be calculated at this time, Claimant does not waive its rights thereto by not stating specific amounts at this time

23 All notices regarding this Proof of Claim should be sent to Whitney Private Debt Fund, 177 Broad Street, Stamford, Connecticut 06901, Attention Robert M Williams, with a copy to Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019-6064, Attention Alan W Kornberg

Exhibit 1

RECYCLED

RECYCLED

THE NOTE (OR ITS PREDECESSOR) EVIDENCED HEREBY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "ACT"), AND THE NOTE EVIDENCED HEREBY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM EACH PURCHASER OF THE NOTE EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION PROVIDED BY RULE 144A UNDER THE ACT. THE HOLDER OF THE NOTE EVIDENCED HEREBY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) SUCH NOTE MAY BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (1)(a) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE ACT IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, OR IN ACCORDANCE WITH RULE 144 UNDER THE ACT, OR PURSUANT TO ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE ACT (AND BASED UPON AN OPINION OF COUNSEL), (b) TO THE ISSUER OR ANY OF ITS SUBSIDIARIES, (c) OUTSIDE THE UNITED STATES IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 904 UNDER THE ACT OR (d) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT AND (2) IN EACH CASE, IN ACCORDANCE WITH THE APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THE NOTE EVIDENCED HEREBY OF THE RESALE RESTRICTIONS SET FORTH IN (A) ABOVE

COPY

WOMEN FIRST HEALTHCARE, INC
SENIOR SECURED NOTE
DUE SEPTEMBER 30, 2005

No. 2 COPY June 25, 2002
$7,500,000

FOR VALUE RECEIVED, the undersigned, WOMEN FIRST HEALTHCARE, INC. (the "Company"), a corporation organized and existing under the laws of the State of Delaware, hereby promises to pay to WHITNEY PRIVATE DEBT FUND, or its registered assigns, the principal sum of SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS on September 30, 2005, with interest (computed on the basis of a 360-day year of twelve months) on the unpaid balance hereof at the initial rate of 11 0% per annum, payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year (an "Interest Payment Date"), commencing on September, 30 2002, to the registered holder of this Note on the fifteenth day preceding each Interest Payment Date, until the principal hereof shall have become due and payable Payments of principal and interest hereon shall be made in lawful money of the United States of America by the method and at the address for such purpose specified in the Securities Purchase Agreement (as defined below) To the extent any of the Notes remain outstanding after 18 months after the first issuance of the Notes, the per annum interest rate shall increase on the basis of the following schedule,

Months after Date of Closing	Interest rate shall be
18-24 months	12 5%
24-42 months	13 0%

COPY

The interest rate for any period during which the Notes are outstanding will be determined on the first day of the period during which such rate shall apply, i e on the Date of Closing and on each Interest Payment Date thereafter If the Company shall default in the payment of the principal of or interest on any Note or any other amount becoming due hereunder or thereunder, by acceleration or otherwise, the Company shall on demand from time to time pay interest, to the extent permitted by law, on such defaulted amount to but excluding the date of actual payment (after as well as before judgment) at the rate otherwise applicable to such Note plus 2 00% per annum

Payments of principal of and interest on this Note are to be made pursuant to the terms of the Note and Warrant Purchase Agreement, in lawful money of the United States of America (or Additional Notes with respect to payments of interest only)

This Note is one of a series of Senior Secured Notes (the 'Notes ') issued pursuant to that certain Note and Warrant Purchase Agreement dated as of June 25 2002 between the Company and the Purchasers (the "Securities Purchase Agreement) Certain capitalized terms used herein have the meanings specified in the Securities Purchase Agreement The holder of this Note is entitled to the applicable benefits of the Securities Purchase Agreement and may enforce such agreements and exercise the remedies provided for thereby or otherwise available in respect thereof all in accordance with and subject to the terms thereof

This Note is a registered Note and as provided in the Securities Purchase Agreement, upon surrender of this Note for registration of transfer, duly endorsed or accompanied by a written instrument of transfer duly executed by the registered holder hereof or such holder's attorney duly authorized in writing a new Note for a like principal amount will be issued to, and registered in the name of, the transferee Prior to due presentment for registration of transfer, the Company may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company shall not be affected by any notice to the contrary

The Company's obligations under this Note are secured by a Lien in favor of the Collateral Agent for the benefit of the Noteholders

COPY

This Note is subject to optional and mandatory redemption, in whole or from time to time in part, during the periods and on the terms specified in the Securities Purchase Agreement

If an Event of Default shall occur and be continuing, the principal of this Note may be declared or otherwise become due and payable in the manner and with the effect provided in the Securities Purchase Agreement

Should any indebtedness represented by this Note be collected at law or in equity, or in bankruptcy or other proceedings, or should this Note be placed in the hands of attorneys for collection, the Company agrees to pay, in addition to the principal, premium, if any, and interest due and payable hereon, all costs of collecting or attempting to collect this Note, including reasonable attorneys' fees and expenses (including those incurred in connection with any appeal)

This Note shall be governed by and construed and enforced in accordance with, the laws of the State of New York, without regard to the principles of conflicts of law

WOMEN FIRST HEALTHCARE, INC

By _____

Name

Title

RECYCLED

WOMEN FIRST HEALTHCARE, INC

$28,000,000

SENIOR SECURED NOTES

DUE SEPTEMBER 30, 2005

AND

WARRANTS TO PURCHASE COMMON STOCK

NOTE AND WARRANT PURCHASE AGREEMENT

Dated as of June 25, 2002

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WOMEN FIRST HEALTHCARE, INC
12220 El Camino Real, Suite 400
San Diego, CA 92130

As of June 25, 2002

Ladies and Gentlemen

The undersigned, WOMEN FIRST HEALTHCARE, INC , a Delaware corporation (the "Company"), hereby agrees with each purchaser (collectively, the "Purchasers") executing a signature page hereto as follows

PARAGRAPH 1 AUTHORIZATION OF ISSUANCE OF THE NOTES AND WARRANTS

The Company has authorized issuance of its Senior Secured Notes due September 30, 2005 (the "Notes") in the initial aggregate principal amount of $28,000,000, together with warrants to purchase 1,699,437 shares of common stock of the Company (the "Warrants") Interest on the Notes shall be payable quarterly The initial interest rate shall be 11 0% per annum (payable in cash) and, following the first 18 months after issuance, shall be increased by 1 5% per annum (payable in additional Notes of like tenor and maturity, bearing the same interest rate ("Additional Notes") or, at the option of the Company, in cash) and then increased by an additional 0 5% per annum six months thereafter (also payable in Additional Notes or, at the option of the Company, in cash), as set forth in the form of Note attached as Exhibit A hereto The initial exercise price of the Warrants shall be $5 50 per share, subject to adjustment as set forth in the form of Warrant attached as Exhibit B hereto

Certain capitalized terms used herein have the meanings specified in Paragraph 10 Unless otherwise indicated, all dollar amounts contained in this Agreement are in U S Dollars and all covenants contained herein shall be calculated in U S Dollars

PARAGRAPH 2. PURCHASE AND SALE OF NOTES AND WARRANTS

Subject to the terms and conditions herein set forth, the Company hereby agrees to sell to the Purchasers and each Purchaser agrees to purchase from the Company at the Closing (as defined below), (i) Notes in the amount set forth on the signature pages hereof below its name at 100% of principal amount, provided, however, that all such issuances of

Notes (exclusive of Additional Notes which may be issued to satisfy interest payment obligations) shall not result in originally issued Notes with an aggregate principal amount exceeding $28,000,000 and (ii) Warrants in the amount set forth on the signature pages hereof below its name for no additional consideration, provided, however, that total of all such Warrants shall not exceed 5 75% of the fully diluted common equity of the Company on the Date of Closing (as defined below) The Company will deliver to each Purchaser one or more Notes in the form attached as Exhibit A hereto registered in the name of such Purchaser (or its nominee), evidencing the aggregate principal amount of Notes to be purchased by such Purchaser and in the denomination or denominations specified by such Purchaser and one or more Warrants in the form attached as Exhibit B hereto registered in the name of such Purchaser (or its nominee), evidencing the number of shares of common stock of the Company to be issued upon exercise of the Warrants to be purchased by such Purchaser and in the denomination or denominations specified by such Purchaser against payment of the purchase price thereof by transfer of immediately available funds on the date of closing, which shall be June 25, 2002 (the "Closing", the "Date of Closing"), to accounts specified by the Company in a funds flow memorandum to be delivered by the Company to the Purchasers not later than one Business Day prior to the Date of Closing To the extent Additional Notes are issued, the Company will deliver to each then holder of the Notes the Additional Notes registered in the name of such holder (or its nominee) The issuance of Additional Notes shall not require the issuance of additional Warrants

PARAGRAPH 3 CONDITIONS PRECEDENT

3A Purchasers' Conditions to Closing. The obligation of each Purchaser to purchase and pay for the Notes and the Warrants to be purchased by such Purchaser hereunder is subject to the satisfaction of the following conditions, on or before the Date of Closing

(i) **Documents To Be Delivered.** Each Purchaser shall have received all of the following, duly executed and delivered

(a) The Notes to be purchased by such Purchaser

(b) The Warrants to be purchased by such Purchaser

(c) The Registration Rights Agreement in substantially the form set forth as Exhibit F hereto

(d) The Security Documents in substantially the forms set forth as Exhibits C-1 and C-2 hereto

(e) Arrangements reasonably satisfactory to the Purchasers shall have been made for all recordings and filings of, or with respect to, the Secu-

rity Agreement, including filings with the United States Patent and Trademark and Copyright offices, and delivery of such other security and other documents including, without limitation, consents of counterparties, and the taking of all actions as may be necessary or, in the reasonable opinion of the Collateral Agent, desirable to perfect the Lien created, or purported to be created, by the Security Agreement

(f) A certificate of the Secretary of the Company dated the Date of Closing, certifying the incumbency and authority of the officers or authorized signatories of the Company who executed the Documents and the truth, correctness and completeness of the following exhibits attached thereto (i) a copy of resolutions duly adopted by the Board of Directors of the Company, in full force and effect at the time this Agreement is entered into, authorizing the execution of this Agreement and the other Documents delivered or to be delivered in connection herewith and the consummation of the transactions contemplated herein and therein, as applicable, (ii) a copy of the certificate of incorporation of the Company, and all amendments thereto, certified by an appropriate official of the Company's jurisdiction of incorporation, and (iii) a copy of the By-laws of the Company

(g) Certificates, dated as of a recent date, as to the valid existence and good standing of the Company and each of its Subsidiaries in its jurisdiction of formation, issued by the appropriate authorities of such jurisdiction

(h) A certificate executed by the principal executive officer of the Company, dated the Date of Closing, in which such officer certifies that the conditions set forth in subsections (a), (b), and (c) of Paragraph 3A(iii) have been satisfied

(i) The opinion of Latham & Watkins, counsel to the Company, dated the Date of Closing and substantially in the form set forth as Exhibit D hereto, subject only to such qualifications, limitations or exceptions as may be acceptable to each Purchaser

(j) The opinion of Cahill Gordon & Reindel, the Purchasers' special counsel, dated the Date of Closing and substantially in the form set forth as Exhibit E hereto, subject only to such qualifications, limitations or exceptions as may be acceptable to each Purchaser

(k) Certificates, dated as of a recent date, of the Company's and its Subsidiaries' good standing and qualification to do business, issued by appropriate officials in each jurisdiction listed on Schedule 3A(i)(k)

(ii) **Fees and Expenses** The payment by the Company, by wire transfer of immediately available funds, of (i) an upfront fee of 2 0% of the total amount committed by the Purchasers (as defined in the commitment letter dated June 18, 2002), to be allocated to such Purchasers pro rata on the basis of their respective commitments set forth therein, (ii) the travel and other reasonable out-of-pocket expenses of the Purchasers related to the Vaniqa Acquisition or this Transaction and (iii) the reasonable fees and disbursements of the Purchasers' counsel (including without limitation Cahill Gordon & Reindel) and consultants related to the Vaniqa Acquisition or this Transaction

(iii) **Representations; No Default.** (a) All representations and warranties made by the Company in any Document shall be true and correct on and as of the Date of Closing (except to the extent that the facts upon which such representations are based have been changed by the transactions herein contemplated and such changes are set forth to the satisfaction of each Purchaser) as if such representations and warranties had been made as of the Date of Closing

(b) No Default under this Agreement or the other Documents shall exist at the Date of Closing

(c) The Company shall have performed and complied with all agreements and conditions required in the Documents to be performed or complied with by the Company on or prior to the Date of Closing

(iv) **Purchase Permitted by Applicable Laws.** The offer by the Company of, and the purchase of and payment for, the Notes and the Warrants on the terms and conditions herein provided (including the use of the proceeds of the sale of such Notes and the Warrants by the Company) shall not violate any applicable law or governmental regulation (including, without limitation, Section 5 of the Securities Act), shall not be enjoined under the laws of any jurisdiction to which the Company or either Purchaser is subject (temporarily or permanently) and shall not subject any Purchaser or any then holders of the Notes or the Warrants to any tax, penalty, liability or other materially adverse condition under or pursuant to any applicable law or governmental regulation

(v) **Concurrent Consummation of Acquisition** Concurrently with the issuance of the Notes, the Company shall consummate the Vaniqa Acquisition on terms and in form and substance reasonably satisfactory to the Purchasers

(vi) **Concurrent Consummation of Preferred Stock Financing.** Concurrently with the issuance of the Notes, the Company shall consummate the issuance and

sale of the Preferred Stock on terms and in form and substance reasonably satisfactory to the Purchasers

(vii) **Proceedings** All corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incident thereto shall be reasonably satisfactory in form and substance to each Purchaser, and each Purchaser shall have received all such counterpart originals or certified or other copies of such documents as they or their counsel may reasonably request

(viii) **Reliance on Related Documents.** Each Purchaser shall be entitled to rely on all written representations, warranties, covenants and opinions rendered by buyer in connection with the consummation of the transactions contemplated by the Transaction Documents

(ix) **No Adverse Change or Development, Etc** (I) There shall not have occurred or become known to the Purchasers any events or changes (A) since December 31, 2001 that, individually or in the aggregate, have had or could reasonably be expected to have a Material Adverse Effect, after giving effect to the Transaction, or (B) that have had or could reasonably be expected to have an adverse effect on the rights or remedies of any Purchaser, or on the ability of the Company to perform its obligations to any Purchaser, (II) trading in any securities of the Company shall not have been suspended or materially limited by the Securities and Exchange Commission or Nasdaq and trading in securities generally on the New York Stock Exchange, American Stock Exchange, Ontario Stock Exchange or the Nasdaq National Market shall not have been suspended or limited and minimum or maximum prices or maximum ranges for prices shall not have been established on any such exchange, (III) a banking moratorium shall not have been declared by New York, Canadian or United States authorities, and (IV) there shall not have been (A) an outbreak or escalation of material hostilities between the United States and any foreign power, or (B) an outbreak or escalation of any other material insurrection or armed conflict involving the United States or any other national or international calamity or emergency or (C) any material change or disruption in the general financial, banking or capital markets of the United States which, in each case, in the judgment of the Purchasers could reasonably be expected to materially and adversely affect or impair the ability to syndicate, sell or place the Notes or the Warrants

(x) **Capital Structure** The pro forma consolidated capital structure of the Company, after giving effect to the Transaction (including only those adjustments approved by the Purchasers), shall be consistent in all material respects with the Projections and capital structure contemplated herein, and other than any Notes and other indebtedness satisfactory to the Purchasers, after giving effect to, and upon consumma-

tion of, the Transaction, the Company and its subsidiary shall have no outstanding indebtedness for money borrowed other than currently outstanding Indebtedness of the Company and its subsidiaries in an aggregate principal amount outstanding not to exceed $21 6 million

(xi) **Approvals** All governmental and third party approvals required by the Transaction and any other material governmental and third party approvals required in connection with the financing contemplated hereby shall have been obtained on reasonably satisfactory terms and shall be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would materially restrain, prevent or otherwise impose material adverse conditions on the financing thereof

(xii) **Financial Statements** The Purchasers shall have received (I) satisfactory audited financial statements of the Company for the three most recent Fiscal Years for which such financial statements are available, (II) satisfactory unaudited interim consolidated financial statements of the Company for each fiscal month and quarterly period ended after the latest Fiscal Year referred to in clause (I) above as to which such financial statements are available and for the corresponding period in the preceding Fiscal Year, (III) a satisfactory pro forma (a) balance sheet of the Company as of the date of the most recent financial statements provided pursuant to clause (II) above and (b) income statement for the most recent of the Fiscal Years provided pursuant to clause (I) above and for the quarterly period provided pursuant to clause (II) above, in each case, which shall give pro forma effect (including only those adjustments approved by the Purchasers) to the Transaction and (IV) the Projections, and such financial statements and Projections shall not reflect any material adverse change in the consolidated financial condition of the Company and its subsidiaries from what was reflected in the financial statements or projections previously furnished to the Purchasers

(xiii) **Minimum EBITDA** The Purchasers shall be satisfied that consolidated EBITDA (as adjusted on a pro forma basis for the Transaction in accordance with customary investment banking practice and including only those adjustments approved by the Purchasers) of the Company, after giving effect to the Transaction, for the latest three month period annualized for which the relevant financial information is available shall equal at least $15 4 million, and the Company shall provide support for such calculation of a nature that is satisfactory to the Purchasers

(xiv) **Minimum Cash Balance** The Purchasers shall be satisfied that, as of the Date of Closing and after giving effect to the Transaction, the Company shall have a minimum cash balance of at least $14 0 million

(xv) **Solvency** Each Purchaser shall have received a certificate satisfactory in form and substance to the Purchasers and executed by the Chief Executive Officer and the Chief Financial Officer of the Company that shall certify to the solvency of the Company and its subsidiaries after giving effect to the Transaction and the other transactions contemplated hereby

3B Conditions Precedent to Obligations of the Company. The obligation of the Company to issue and sell the Notes and the Warrants is subject to the satisfaction, on or before the Date of Closing, of the following conditions

(i) **Purchaser Deliveries** (a) The Company shall have received the following from each Purchaser, duly executed and delivered (A) the Registration Rights Agreement in substantially the form set forth as Exhibit F hereto and (B) the Security Documents in substantially the forms set forth as Exhibits C-1 and C-2 hereto

(b) The Purchasers shall have tendered payment pursuant to Paragraph 2 above

(ii) **Expenses** The Purchasers shall have provided to the Company a statement of, and at the request of the Company reasonable documentation for, (a) the travel and other reasonable out-of-pocket expenses of the Purchasers related to the Vaniqa Acquisition or the Transaction and (b) the reasonable fees and disbursements of the Purchasers' counsel (including without limitation Cahill Gordon & Reindel) and consultants related to the Vaniqa Acquisition or the Transaction

(iii) **Representations and Warranties** The representations and warranties made by each Purchaser herein shall be true and correct on and as of the Date of Closing with the same effect as though such representations and warranties had been made on and as of the Date of Closing

(iv) **Purchase Permitted by Applicable Laws** The offer by the Company of, and the purchase of and payment for, the Notes and the Warrants on the terms and conditions herein provided (including the use of the proceeds of the sale of such Notes and the Warrants by the Company) shall not violate any applicable law or governmental regulation (including, without limitation, Section 5 of the Securities Act) and shall not be enjoined under the laws of any jurisdiction to which the Company or any Purchaser is subject (temporarily or permanently)

(v) **Vaniqa Closing** All conditions to consummation of the Vaniqa Acquisition shall have been performed or waived by the appropriate parties thereto at the Date of Closing

(vi) **Concurrent Consummation of Preferred Stock Financing** Concurrently with the issuance of the Notes, the Company shall consummate the issuance and sale of the Preferred Stock

(vii) **Approvals** All governmental and third party approvals required by the Transaction and any other material governmental and third party approvals required in connection with the financing contemplated hereby shall have been obtained on reasonably satisfactory terms and shall be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would materially restrain, prevent or otherwise impose material adverse conditions on the financing thereof

PARAGRAPH 4 REDEMPTION OF THE NOTES.

4A Optional Redemption. On or after the Date of Closing, the Notes may be redeemed at the option of the Company at any time as a whole, or from time to time in part, without premium or penalty except as set forth below, in amounts not less than $1,000,000 and in increments of $500,000, at a redemption price of 108% of the aggregate principal amount of Notes outstanding (the "Optional Redemption Price"), plus accrued and unpaid interest (if any) to the date of redemption

4B Mandatory Redemption Net Proceeds of loans or sales of other debt securities (to include, but not limited to, loans or debt securities related to currently unencumbered assets) other than Net Proceeds of the Permitted Debt incurred after the Date of Closing, to the full extent of the Net Proceeds so received, and 75% of the Net Proceeds of an offering of equity securities, whether in a public offering or private placement and whether by the Company or any of its Subsidiaries, shall be used to redeem the Notes at the Optional Redemption Price, plus accrued and unpaid interest (if any) to the date of redemption within 30 days of receipt of such proceeds Excluded from the foregoing mandatory redemption requirement shall be (a) proceeds from any equity offering to the extent used (i) to acquire substantially all of the rights to Esclim under license as of the Date of Closing, (ii) to refinance the senior secured note of the Company held by American Home Products Corporation or (iii) to make a Permitted Acquisition Also excluded from the foregoing mandatory redemption requirement for a period of six months following receipt thereof by the Company shall be up to $7 5 million of proceeds from one or more equity offerings yielding proceeds of less than $7 5 million, which proceeds shall promptly be deposited in a revolving escrow account to be used solely to either (a) before the six-month anniversary of the receipt of such proceeds by the Company, make a Permitted Acquisition, or (b) on or after such six-month anniversary, commence a mandatory redemption of the Notes in accordance with this Paragraph 4B, provided, that the Purchasers shall have a perfected first priority security interest in all amounts held in such escrow account at all times while any amount is on deposit therein The Com-

pany shall not be required to redeem Notes pursuant to this Paragraph 4B if the Net Proceeds available to redeem Notes pursuant to this Paragraph 4B are less than $500,000 (which lesser amount shall be carried forward for purposes of determining whether such a redemption is required with respect to the Net Proceeds from any subsequent loans or offerings of debt or equity securities)

4C Notice of Redemption. The Company shall give the holder of each Note irrevocable written notice of any redemption pursuant to Paragraph 4A or 4B not less than 15 Business Days nor more than 30 Business Days prior to the date specified for such redemption, specifying such date and the principal amount of the Notes held by such holder to be redeemed on such date and stating that such redemption is to be made pursuant to Paragraph 4A or 4B Notice of redemption having been given as aforesaid, the principal amount of the Notes specified in such notice, together with any premium and accrued and unpaid interest (if any) thereon to the redemption date with respect thereto, shall become due and payable on such redemption date

4D. Change in Control (a) In the event of any Change in Control, holders of Notes shall have the right, at their option, to require the Company to purchase all or any portion of the Notes on the date (the "Change in Control Payment Date") which is 20 Business Days after the date the Change in Control Notice (as defined below) is required to be mailed (or such later date as is required by applicable law) at the Optional Redemption Price, plus accrued and unpaid interest (if any) to the Change in Control Payment Date

(b) The Company shall send all holders of the Notes, within five Business Days after the occurrence of any Change in Control, a notice of the occurrence of such Change in Control (the "Change in Control Notice"), provided that the foregoing five Business Day period will be extended by 120 days in the event of Mr Calesa's death prior to the earlier of (i) 60 days after the Date of Closing or (ii) the date on which the Company is first in compliance with Paragraph 5P

Each Change in Control Notice shall state

(1) the Change in Control Payment Date,

(2) the date by which the right to have Notes purchased must be exercised,

(3) that such right is conditioned on receipt of notice from the holders,

(4) the purchase price, if the right to have Notes purchased is exercised,

(5) a description of the procedure which the holders of Notes must follow to exercise the right to have Notes purchased,

(6) that the purchase is being made pursuant to this Paragraph 4D,

(7) that any Note not tendered will continue to accrue interest if interest is then accruing, and

(8) that, unless the Company defaults in making payment therefor, any Note accepted for purchase shall cease to accrue interest after the Change in Control Payment Date

No failure of the Company to give the foregoing notice shall limit any holder's right to exercise a right to have Notes purchased

The Company shall not be required to purchase all or any portion of the Notes under subparagraph (a) of this Paragraph 4D if a third party offers to purchase the Notes in the manner, at the time and otherwise in compliance with the requirements set forth in this Paragraph 4D and purchases all Notes or portions thereof validly tendered and not withdrawn under this Paragraph 4D

4E Excess Cash Flow (a) If the Company has Excess Cash Flow for the period commencing on the Date of Closing and ending December 31, 2002 or for any Fiscal Year thereafter, the Company shall apply an amount equal to 75% of the Excess Cash Flow for such period or Fiscal Year

(1) *first,* to make an offer to the holders of the Notes to purchase Notes pursuant to and subject to the conditions contained in this Agreement (an "Excess Cash Flow Offer"),

(2) *second,* to the extent of the balance of such percentage of Excess Cash Flow after application in accordance with subsection (1) above, to make an offer to the holders of the Preferred Stock to purchase their shares of Series A Preferred Stock pursuant to and subject to the conditions contained in the certificate of designations relating thereto, and

(3) *third,* to the extent of the balance of such percentage of Excess Cash Flow after application in accordance with clauses (1) and (2) above, to any other application or use not prohibited by this Agreement

(b) In the event of the occurrence of an Excess Cash Flow Offer, holders of Notes shall have the right, at their option, to require the Company to purchase such portion of the Notes on the date (the "Excess Cash Flow Payment Date") which is 20 Business Days after the date the Excess Cash Flow Notice (as defined below) is required to be mailed (or such later date as is required by applicable law) at a price equal to 100% of the principal amount

thereof plus accrued and unpaid interest (if any) to the Excess Cash Flow Payment Date The Company shall not be required to make an Excess Cash Flow Offer to purchase Notes pursuant to this Paragraph 4E if the Excess Cash Flow available therefor is less than $500,000 (which lesser amount shall be carried forward for purposes of determining whether such an offer is required with respect to the Excess Cash Flow in any subsequent Fiscal Year)

(c) The Company shall send all holders of the Notes, within 90 Business Days after end of the Fiscal Year, a notice of the occurrence of such Excess Cash Flow (the "Excess Cash Flow Notice")

Each Excess Cash Flow Notice shall state

(1) the Excess Cash Flow Payment Date,

(2) the date by which the right to have Notes purchased must be exercised,

(3) that such right is conditioned on receipt of notice from the holders,

(4) the purchase price, if the right to have Notes purchased is exercised,

(5) a description of the procedure which the holders of Notes must follow to exercise the right to have Notes purchased,

(6) that the purchase is being made pursuant to this Paragraph 4E,

(7) that any Note not tendered will continue to accrue interest if interest is then accruing, and

(8) that, unless the Company defaults in making payment therefor, any Note accepted for purchase shall cease to accrue interest after the Excess Cash Flow Payment Date

No failure of the Company to give the foregoing notice shall limit any holder's right to exercise a right to have Notes purchased

4F. Partial Redemptions Pro Rata. Upon any partial redemption of the Notes pursuant to Paragraph 4A or 4B, the principal amount so redeemed shall be allocated to all Notes at the time outstanding in proportion to the respective outstanding principal amounts thereof

4G Retirement of the Notes. The Company shall not redeem or otherwise retire in whole or in part prior to their stated final maturity (other than by redemption pursuant to Paragraph 4A or 4B or upon acceleration of such final maturity pursuant to Paragraph 7A),

or purchase or otherwise acquire, directly or indirectly, Notes held by any holder unless the Company shall have offered to redeem or otherwise retire or purchase or otherwise acquire, as the case may be, the same proportion of the aggregate principal amount of Notes held by each other holder of Notes at the time outstanding upon the same terms and conditions Any Notes so redeemed or otherwise retired or purchased or otherwise acquired by the Company shall not be deemed to be outstanding for any purpose under this Agreement

PARAGRAPH 5. AFFIRMATIVE COVENANTS.

To induce each Purchaser to enter into this Agreement and purchase the Notes and the Warrants, the Company covenants and agrees as follows

5A Payment and Performance. The Company shall pay all amounts due by it under the Documents in accordance with the terms thereof and will observe, perform and comply with every covenant, term and condition in the Documents applicable to it

5B Books, Financial Statements and Reports The Company shall at all times maintain and shall cause its Subsidiaries to at all times maintain materially complete and accurate books of accounts and records The Company shall maintain and shall cause its Subsidiaries to maintain a standard system of accounting and will furnish the following statements and reports to each Purchaser or each then holder of Notes at the Company's expense

(i) (A) No later than 90 days after the end of each Fiscal Year, audited consolidated financial statements of the Company, together with all notes thereto, prepared in reasonable detail in accordance with GAAP, together with an opinion, based on an audit using United States generally accepted auditing standards, by independent certified public accountants of national reputation selected by the Company, stating that such financial statements have been so prepared The consolidated financial statements of the Company shall contain a balance sheet as of the end of such Fiscal Year and a statement of operations, cash flows and stockholders' equity for such Fiscal Year, each setting forth in comparative form the corresponding figures for the preceding Fiscal Year (B) No later than 90 days following the first day of each Fiscal Year of the Company, a budget prepared by the Company for each of the four quarters of such Fiscal Year prepared in the same level of detail as prepared for and delivered to the Company's Board of Directors for the Company and its Subsidiaries, accompanied by a statement of the Chief Financial Officer of the Company to the effect that the budget is a reasonable estimate for the period covered thereby

(ii) No later than 45 days after the end of each of the first three Fiscal Quarters of the Company's Fiscal Year, the Company's unaudited consolidated balance sheet as of the end of such Fiscal Quarter and an unaudited consolidated statement of operations and cash flows for such Fiscal Quarter and for the period from the

beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case, in comparative form, figures for the corresponding periods in the preceding Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, subject to changes resulting from normal or recurring year-end adjustments

(iii) No later than 30 days after the end of each calendar month, the Company's unaudited consolidated interim balance sheet as of the end of such month and the related unaudited consolidated interim statements of operations and cash flows for such one-month period and the portion of the Fiscal Year through the end of such month, setting forth in each case, in comparative form, figures for the corresponding fiscal periods in the preceding Fiscal Year (subject to normal year-end audit adjustments and the absence of footnote disclosure)

(iv) The Company will (A) together with each set of financial statements furnished under subsection (i) of this Paragraph, furnish a certificate signed by the firm auditing such financial statements containing a statement to the effect that such firm has examined Paragraphs 6 and 7 of this Agreement and that in the course of their examination they did not become aware of any Event of Default, or any event which upon notice or lapse of time or both would constitute an Event of Default, under such Paragraph 6 (or, if such an event has occurred, a statement explaining its nature and extent), provided, however, that in issuing such statement, such firm shall not be required to exceed the scope of normal auditing procedures conducted in connection with their opinion referred to above, and (B) together with each set of financial statements furnished under subsections (i) and (ii) of this Paragraph, furnish a certificate signed by the Chief Financial Officer of the Company containing calculations showing compliance (or non-compliance) at the end of such Fiscal Year or Fiscal Quarter, as the case may be, with the requirements of Paragraphs 4B, 4E, 6A, 6B, 6C, 6D, 6E, 6H, 6I and 6K and stating that such financial statements fairly present the financial condition of the Company and its consolidated Subsidiaries, that the signatory has reviewed the Documents and that no Event of Default or Default exists at the end of such Fiscal Year or Fiscal Quarter, as the case may be, or at the time of such certificate or specifying the nature and period of existence of any such Event of Default or Default

(v) For so long as the Company is required to make filings with the Securities and Exchange Commission pursuant to Sections 13 and 15(d) of the Exchange Act, so long as any of the Notes are outstanding, the Company shall furnish to each Noteholder the annual reports, quarterly reports, current reports, proxy statements and other documents that the Company has filed with the Securities and Exchange Commission pursuant to Sections 13 and 15(d) of the Exchange Act, such documents to be furnished to each Noteholder within 15 days of the respective dates by which the Company has filed such documents (unless an earlier time is specified herein)

5C. Other Information and Inspections The Company shall, and shall cause its Subsidiaries to, furnish to each Noteholder any information which such holder may from time to time reasonably request concerning any covenant, provision or condition of the Documents or any matter in connection with the Company's, or any of its Subsidiaries', business and operations During normal business hours, upon reasonable notice, and without undue interruption of the Company's and its Subsidiaries' business, the Company shall, and shall cause its Subsidiaries to, permit representatives of each holder or group of holders of a combination of at least $5,000,000 in (i) principal amount of the Notes and (ii) accreted stated value of the Preferred Stock (each such holder or group "Significant Noteholders"), including each Significant Noteholder's independent accountants, agents, attorneys, appraisers and any other representatives, to visit and inspect any of the Company's, or such Subsidiary's, Property, including its books of account, other books and records, and any facilities or other business assets, provided that no individual Noteholder shall be permitted such inspection rights in the event such Noteholder does not hold a combination of at least $2,500,000 (i) in principal amount of Notes and (ii) accreted stated value of the Preferred Stock The inspections in accordance with the preceding sentence shall be limited to no more than four times each calendar year for each Noteholder The out-of-pocket costs and expenses of the first inspection by each Noteholder shall be borne by the Company, except to the extent such cost and expenses of all Noteholders and the holders of Preferred Stock exceed $50,000 per year, and all out-of-pocket costs and expenses of the remaining three inspections per year shall be borne by the relevant Noteholders, provided, however, that during any period in which an Event of Default has occurred and is continuing, the number of inspections shall not be limited, and the reasonable, documented out-of-pockets costs and expenses of the inspections during the period in which an Event of Default has occurred and is continuing shall be borne by the Company The representatives of the Significant Holders who conduct any inspections shall execute a confidentiality agreement reasonably acceptable to the Company In connection with any such inspections, the Company shall, and shall cause its Subsidiaries to, permit the Significant Noteholders or representatives of the Noteholders to investigate and verify the accuracy of the information furnished to the Significant Noteholders in connection with the Documents and to discuss all such matters with its officers, employees and representatives Each Noteholder agrees that it shall keep confidential any proprietary information given to it by the Company or any of its Subsidiaries, provided, however, that this restriction shall not apply to information which (i) has at the time in question entered the public domain other than by reason of breach of this provision by any Noteholder, (ii) is required to be disclosed by law or by any order, rule or regulation of any court or governmental agency, or authority, (iii) is disclosed to any Affiliates, auditors, attorneys, or agents of the Noteholders so long as the Noteholders request that such Person or Persons keep such information confidential in accordance with the terms of the confidentiality provisions of this Paragraph 5C, or (iv) is furnished to purchasers or prospective purchasers of the Notes, provided that such purchasers or prospective purchasers shall be apprised of the confidential nature of such information and shall agree with the Company to hold such information confidential in accordance with the terms of

the confidentiality provisions of this Paragraph 5C With respect to clause (ii) of the preceding sentence, the Noteholder proposing to disclose such information shall promptly notify the Company and shall use commercially reasonable efforts to obtain or provide the Company with the opportunity to obtain confidential treatment of such information by the court, governmental agency, authority or other disclosee

5D. Notice of Material Events The Company shall, and shall cause its Subsidiaries to, promptly notify the Noteholders (i) of the existence of any Lien (other than Liens permitted under Paragraph 6F of this Agreement) on the Company's or such Subsidiary's property or an event or condition that could reasonably be expected to result in a Material Adverse Effect, (ii) of the occurrence of any Default, (iii) of the default in payment on, or the acceleration of the maturity of, any Debt owed by the Company or any of its Subsidiaries or of any other default by the Company or any of its Subsidiaries under any indenture, mortgage, agreement, contract or other instrument to which any of them is a party or by which any of them or any of their Properties is bound if such other default could reasonably be expected to have a Material Adverse Effect, (iv) of any claim asserted against the Company or any of its Subsidiaries or with respect to the Company's or any of its Subsidiaries' Properties that could reasonably be expected to have a Material Adverse Effect, (v) of the filing of any suit or proceeding against the Company or any of its Subsidiaries in which an adverse decision could reasonably be expected to have a Material Adverse Effect (vi) of the occurrence of any (a) Termination Event, (b) "prohibited transaction" (within the meaning of Section 4975 of the IRC or Section 406 of ERISA), other than one to which an exemption applies, (c) failure to make a timely contribution to any Pension Plan, if such failure has given rise to a Lien under Section 412(n) of the IRC, or (d) actual, asserted or alleged violation of ERISA, the IRC or comparable provision of applicable foreign law that, with respect to any of the events set forth in the foregoing clauses (a) through (d), could reasonably be expected to result in a material tax, penalty or other material adverse consequence to the Company, any of its Subsidiaries or any ERISA Affiliate in connection with any Pension Plan, and shall provide a written notice specifying the nature thereof, what action the Company is taking or proposes to take with respect thereto, and, when known, any action taken by the IRS, the U S Department of Labor, the PBGC, any foreign governmental entity or any other Person with respect thereto and (vii) of the receipt of any notice of termination or notice that exclusive rights will become non-exclusive under any material license agreement under which the Company receives rights to manufacture, distribute or sell a product Upon the occurrence of any of the foregoing, the Company shall, and shall cause its Subsidiaries to, take all reasonably necessary or appropriate steps to remedy promptly any such material event, Default or default, to protect against any such adverse claim, to defend any such suit or proceeding, and to resolve all controversies on account of any of the foregoing

5E Maintenance of Properties The Company shall, and shall cause its Subsidiaries to, maintain, preserve, protect, and keep all Property necessary to the business of the Company and its Subsidiaries in reasonably good condition (ordinary wear and tear excepted) and in compliance with all applicable laws, rules and regulations, except where non-compliance could not reasonably be expected to have a Material Adverse Effect

5F. Maintenance of Existence and Qualifications Except as provided in Paragraph 6G, the Company shall, and shall cause each of its Subsidiaries to, (a) maintain and preserve its corporate or other existence and its rights, franchises and privileges in full force and effect, and (b) qualify to do business as a foreign corporation or limited liability company, as the case may be, in all states or jurisdictions where required by applicable law except where the failure to be so qualified would not result, individually or in the aggregate, in a Material Adverse Effect

5G Payment of Taxes The Company shall, and shall cause each of its Subsidiaries to, (i) timely file all required tax returns, and (ii) timely pay all Taxes, assessments, and other governmental charges or levies imposed upon it or upon its income, profits or Property, except to the extent the same are being contested in good faith and for which adequate reserves under GAAP have been established

5H Insurance The Company shall, and shall cause each of its Subsidiaries to, maintain insurance in such amounts and covering such risks as are usually and customarily carried with respect to all Property of a character usually insured by similar Persons engaged in the same or similar businesses The Company shall, and shall cause each of its Subsidiaries to, at all times maintain insurance against its liability for injury to persons or Property, which insurance shall be by financially sound and reputable insurers

5I. Evidence of Compliance. The Company shall furnish to each Noteholder at the Company's expense (i) within 45 days after the end of each of the first three Fiscal Quarters of any Fiscal Year and within 90 days after the end of each Fiscal Year, a certificate signed by the Chairman of the Board, the President or the Chief Financial Officer of the Company and (ii) all evidence that any Noteholder from time to time reasonably requests, in each case, as to the accuracy and validity of or compliance with all representations, warranties and covenants made by the Company in the Documents, the satisfaction of all conditions contained therein and all other matters pertaining thereto, except to the extent any of the foregoing matters are covered by another compliance provision contained herein

5J Information Required by Rule 144A. The Company shall, upon the request of a Noteholder, provide such holder, and any qualified institutional buyer designated by such holder, such financial and other information as such holder may reasonably determine to be necessary in order to permit compliance with the information requirements of Rule 144A under the Securities Act in connection with the resale of Notes, except at such times as the

Company is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act For the purpose of this Paragraph 5J, the term "qualified institutional buyer" shall have the meaning specified in Rule 144A under the Securities Act

5K. Compliance with Agreements and Law The Company shall, and shall cause each of its Subsidiaries to, perform all obligations it is required to perform under the terms of each indenture, mortgage, deed of trust, security agreement, lease, franchise, agreement, contract or other instrument or obligation to which it is a party or by which it or any of its Properties is bound, except where failure to comply could not reasonably be expected to have a Material Adverse Effect The Company shall, and shall cause each of its Subsidiaries to, conduct its business and affairs in compliance with all laws, regulations, and orders applicable thereto, except where failure to comply could not reasonably be expected to have a Material Adverse Effect

5L Indemnity The Company agrees to indemnify each holder of Notes or Warrants, upon demand, from and against any and all liabilities, obligations, claims, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (including reasonable fees of attorneys, accountants, experts and advisors) of any kind or nature whatsoever (in this section collectively called "liabilities and costs") which to any extent (in whole or in part) may be imposed on, incurred by or asserted against any holder of a Note or Warrant growing out of, resulting from or in any other way associated with the Documents and the transactions and events associated herewith or therewith or contemplated herein or therein No holder of Notes or Warrants shall be entitled under this paragraph to receive indemnification for any liabilities and costs (i) to the extent caused by its own individual gross negligence, willful misconduct or bad faith, (ii) to the extent caused by its breach of any law, rule, regulation, order or any contract, agreement or other instrument to which it is a party or otherwise bound, or (iii) which arise from actions or proceedings convened by a Noteholder against another Noteholder or by a holder of Warrants against another holder of Warrants The Company shall not, in connection with any one action or proceeding or separate but substantially similar or related actions or proceedings in the same jurisdiction arising out of the same general allegations or circumstances, be responsible hereunder for the reasonable fees and expenses of more than one law firm, in addition to any local counsel, for all of the holders of Notes or Warrants, except to the extent any holder of Notes or Warrants shall have been advised by legal counsel that there is a reasonable likelihood that there may exist a conflict of interest between any of such holders of Notes or Warrants or that any such holders of Notes or Warrants may have one or more defenses available that are different from or additional to any defense or defenses available to any other holder of Notes or Warrants None of the Company, any Noteholder or any holder of Warrants will, without the prior written consent of the other, settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action, suit or proceeding in respect of which indemnification by such Noteholder or holder of Warrants may be sought hereunder (whether or not such Noteholder or holder of

Warrants is a party to such claim, action, suit or proceeding), provided that the Noteholder or holder of Warrants may so settle such claim without such consent if such settlement includes a full release of the Company by the Noteholder or holder of Warrants or if the Company is not then in material compliance with its obligations under this Paragraph 5L

5M Subordination All existing and hereafter arising Indebtedness of the Company (excluding the Existing Secured Debt as of the Date of Closing and a Permitted Working Capital Facility) shall be subordinated to the Indebtedness and other obligations of the Company under the Documents pursuant to subordination agreements reasonably satisfactory in form and substance to the Required Holders, in their sole and absolute discretion

5N. Maintenance of Perfected Security Interests in the Collateral. The Company shall, and shall cause its Subsidiaries to, perform any and all acts and execute any and all documents (including, without limitation, the execution, amendment or supplementation of any financing statement and continuation statement) for filing in any appropriate jurisdiction under the provisions of the UCC, local law or any statute, rule or regulation of any applicable jurisdiction and for filing with the United States Patent and Trademark Office and the United States Copyright Office which are necessary or, in the reasonable opinion of the Collateral Agent, desirable in order to maintain, confirm, grant, preserve, protect and perfect the validity and first priority in favor of the Collateral Agent for the ratable benefit of the Purchasers a valid and perfected Lien on the Collateral, subject to no Liens except for the Liens permitted by the applicable Security Documents, and shall deliver to the Purchasers an opinion of outside counsel acceptable to the Purchasers (whose acceptance shall not be unreasonably withheld) which shall opine as to the perfection of such filings with United States Patent and Trademark Office and the United States Copyright Office The Company shall, as promptly as practicable after receipt of copies of any financing statements, deliver to the Collateral Agent acknowledgment copies of, or copies of lien search reports confirming the filing of, financing statements duly filed under the UCC of all jurisdictions as may be necessary or, in the reasonable opinion of the Collateral Agent, desirable to perfect the Lien created, or purported or intended to be created, by each Security Document The Company agrees to, from time to time, provide such evidence as the Collateral Agent shall reasonably request as to the perfection and priority status of each security interest and Lien contemplated If the Company has not performed all such acts, delivered such opinion of counsel and executed all such filings within the date which is ten days from the Date of Closing, interest on the Notes shall increase by a rate of 50 basis points, and shall increase by an additional 50 basis points if such acts have not been performed and filings have not been executed another ten days thereafter, and if such acts have not been performed and such filings have not been executed 30 days after the Date of Closing, such failure to act shall constitute an Event of Default without giving effect to the grace period referenced in Paragraph 7A(vi) Any rate increase pursuant to this Paragraph 5N shall be of no further force or effect immediately upon demonstration to the Purchasers that all such actions and filings have been taken and made Notwithstanding the

foregoing, the Company shall not be deemed to have defaulted under this Paragraph 5N for any failure to create, perfect or maintain a security interest by reason of any invalidity or unenforceability of the Security Documents with respect to the rights, if any, of the holders of the Preferred Stock (including as a result of the application of the laws and other principles set forth in the Preferred Security Interest Exceptions (defined in Paragraph 8E below))

5O Non-Voting Observer. For so long as shares of the Preferred Stock or any Notes, with combined accreted stated value and principal amount thereof in excess of 10% of the combined accreted stated value and principal amount issued at the Closing, remain outstanding, the holders of outstanding shares of Preferred Stock and Notes shall be entitled to designate a non-voting observer (an "Observer") to the Board of Directors of the Company (which Observer shall be entitled to have expenses reimbursed by the Company as if such Observer were a director of the Company) The Observer shall be appointed by the holders of a majority of the aggregate accreted stated value of Preferred Stock and the aggregate principal amount of Notes, voting together as a single class Any person designated as an Observer to the Board of Directors will, to the extent permissible under Delaware law, have the right (w) to notice of and to be present at all meetings of the Board of Directors and its committees and to receive all materials, notices, minutes, consents and forms of consents in lieu of meetings distributed to the Board of Directors generally or to members of its committees at or in connection with any such meeting or action by written consent in lieu of such meeting, (x) to have the same access to which directors are entitled under Delaware law to the books and records of, and information concerning the business and operations of, the Company and Board of Directors, (y) to be provided with copies of all notices, minutes, consents, forms of consents in lieu of meetings and all other materials provided to one or more of the directors of the Company (who are not officers or employees of the Company), and (z) to have the same access to all information and materials, books and records and employees of the Company and of its Subsidiaries as may be given to any director of the Company (who is not an officer or employee of the Company), provided, however, that the rights granted to the Observer under this Agreement (including the right to receive all materials, notices, minutes, consents and forms of consents in lieu of meetings) shall be temporarily suspended if and to the extent, in the reasonable opinion of the Board of Directors, the Observer's attendance at any such meeting or portion thereof (i) violates any law or Company policy regarding conflicts of interest with interested members of the Board of Directors as applied generally to meetings of the Board of Directors or (ii) otherwise could violate the fiduciary duties of the Board of Directors or constitute a waiver of any attorney-client privilege that may exist in connection with such meeting or any portion thereof, as advised by outside counsel to the Company The Board of Directors shall not hold informal meetings of the Board of Directors or any committee thereof (unless the Observer is invited thereto) as a means designed to circumvent or having the effect of circumventing the intention that the holders of Notes and Preferred Stock will have access to the Board of Directors and its committees as provided under this Agreement.

5P Key Man Insurance Within 60 days after the Date of Closing, the Company shall obtain a "key man" life insurance policy on Edward F Calesa on terms satisfactory to the Purchasers (including naming the Purchasers as beneficiaries) and shall keep effective such policy in an amount of at least $5,000,000 The Purchasers agree to apply any proceeds received by them as beneficiaries under such policy on a pro rata basis in satisfaction of the Company's obligations under the Notes

5Q Reliance on Related Documents The Company hereby agrees that each Purchaser shall be entitled to rely on all written representations, warranties and covenants rendered by the Company in connection with the consummation of the transactions contemplated by the Transaction Documents

5R. Allocation of Shares of Common Stock. The Company shall, at all times after the Date of Closing, take instructions from the Required Holders as relates to the allocation of shares of its Common Stock issuable upon exercise of the Warrants and conversion of the shares of Preferred Stock The Company shall not issue shares of its Common Stock pursuant to any exercise of the Warrants or conversion of the shares of Preferred Stock, except as in accordance with instructions from the Required Holders

5S Certain Approval Not later than the next annual meeting of the Company's held in accordance with the Company's by-laws, the Company shall submit to the stockholders for their approval the issuance by the Company of shares of Common Stock exceeding 20% of the number of shares of Common Stock outstanding on the Date of Closing as a consequence of the conversion of shares of Preferred Stock and exercise of the Warrants into shares of Common Stock, together with the recommendation of its Board of Directors for approval of such proposal The Company shall use its best efforts to cause the approval by a majority of the total votes cast on the proposal, in person or by proxy, of such proposal, which may include securing a voting agreement from Edward F Calesa agreeing to vote in favor of the proposal, hiring a proxy solicitor and direct solicitation efforts of significant stockholders

PARAGRAPH 6. NEGATIVE COVENANTS.

To induce each Purchaser to enter into this Agreement and purchase the Notes, the Company warrants, covenants and agrees as follows

6A. Prohibition on Additional Indebtedness The Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, assume, incur or otherwise be liable for (collectively, "incur") any Debt (including, without limitation, Acquired Indebtedness and Purchase Money Indebtedness) other than the Permitted Debt

6B. Maintenance of EBITDA The Company shall not, and shall not permit any of its Subsidiaries to, permit Actual EBITDA for the Company (a) for the three consecu-

tive Fiscal Quarters ending September 30, 2002 to be less than $6 2 million and (b) for the period of four consecutive Fiscal Quarters ending on each date specified below to be less than the amount set forth opposite such period below

Date	Actual EBITDA Amount
December 31, 2002	$9 0 million
March 31, 2003	$11 3 million
June 30, 2003	$12 3 million
September 30, 2003	$13 3 million
December 31, 2003	$14 5 million
March 31, 2004	$15 5 million
June 30, 2004	$16 5 million
September 30, 2004	$17 5 million
December 31, 2004	$18 5 million
March 31, 2005	$18 5 million
June 30, 2005	$18 5 million

6C Maintenance of Fixed Charge Coverage Ratio. The Company shall not, and shall not permit any of its Subsidiaries to, permit the Fixed Charge Coverage Ratio of the Company (a) for the three consecutive Fiscal Quarters ending September 30, 2002 to be less than 2 0 1 and (b) for the period of four consecutive Fiscal Quarters ending on each date specified below to be less than the amount set forth opposite such period below

Date	Fixed Charge Coverage
December 31, 2002	2 0 1
March 31, 2003	2 0 1
June 30, 2003	2 0 1
September 30, 2003	2 0 1
December 31, 2003	1 75 1
March 31, 2004	2 0 1
June 30, 2004	2 0 1
September 30, 2004	2 0 1
December 31, 2004	2 0 1
March 31, 2005	2 0 1
June 30, 2005	2 0 1

6D Maintenance of Minimum Net Worth The Company shall not, and shall not permit any of its Subsidiaries to permit Adjusted Net Worth of the Company, as of the end of any Fiscal Quarter of the Company, to be less than 90% of the Net Worth of the Company as of June 30, 2002, increasing at the end of fiscal 2002 by 50% of Consolidated Net Income from July 1, 2002 to the end of fiscal 2002 and at the end of each Fiscal Year thereafter by 50% of the Consolidated Net Income, provided that no adjustment shall be made for any period in which the Company has negative Consolidated Net Income

6E Capital Expenditures The Company shall not, and shall not permit any of its Subsidiaries to, make any Capital Expenditures, during the Fiscal Years ending on each date specified below to exceed the amount set forth opposite such period below

Fiscal Year	Capital Expenditures
2002	$2 9 million
2003	$1 75 million
2004	$1 75 million

6F. Limitation on Liens The Company shall not, and shall not permit any of its Subsidiaries, to incur or suffer to be incurred or allow to exist any Lien in respect of any Property of the Company or any of its Subsidiaries, other than

(1) Liens on the Collateral in favor of the Collateral Agent for the benefit of the Noteholders and the holders of the Preferred Stock in accordance with the Security Agreement,

(2) Liens on inventory and/or receivables of the Company securing Indebtedness under a Permitted Working Capital Facility,

(3) Liens for taxes or assessments or other governmental charges or levies, not yet due or payable or which are being contested in good faith by appropriate proceedings, provided that adequate reserves with respect thereto are maintained on the books of the Company or its Subsidiaries, as the case may be, in conformity with GAAP,

(4) Liens created by or resulting from any litigation or legal proceeding which is being contested in good faith by appropriate proceedings, provided that ade-

quate reserves with respect thereto are maintained on the books of the Company or its Subsidiaries, as the case may be, in conformity with GAAP,

(5) other Liens incidental to the normal conduct of the business of the Company or its Subsidiaries which do not secure Debt and which do not in the aggregate materially impair the use of such Property in the operation of the business of the Company and its Subsidiaries taken as a whole or the value of such Property for the purposes of such business,

(6) subject to compliance with or a waiver of Paragraph 6A, (i) any Lien on Property existing on such Property at the time of acquisition thereof, whether or not the Debt secured thereby is assumed by the Company or any Subsidiary thereof, or (ii) any Lien existing on the Property of a Person at the time such Person is merged into or consolidated with the Company or any Subsidiary thereof or at the time of a sale, lease or other disposition of the Properties of a Person or firm as an entirety or substantially as an entirety to the Company or any Subsidiary thereof, provided that none of such Liens shall exceed 100% of the fair market value of the related Property and no other Property of the Company or any Subsidiary shall be subject to any such Lien,

(7) subject to compliance with or a waiver of Paragraph 6A, purchase money Liens to finance Property or assets of the Company or any Subsidiary acquired in the ordinary course of business, provided, however, that (A) the related purchase money Debt shall not exceed the cost of such Property or assets and shall not be secured by any Property or assets of the Company or its Subsidiaries other than the Property and assets so acquired and (B) the Lien securing such Debt shall be created within 90 days of such acquisition,

(8) subject to compliance with or a waiver of Paragraph 6A, Liens securing Capitalized Lease Obligations, provided that such Lien does not extend to any property other than that subject to the underlying lease,

(9) Liens existing on the Date of Closing, or

(10) Liens in favor of the Company

6G Limitation on Mergers The Company shall not, nor shall it permit any of its Subsidiaries to, in a single transaction or through a series of related transactions, merge or consolidate with or into any other Person, provided that this Paragraph 6G shall not apply in the event of a Change in Control where the Company complies with Paragraph 4D, and provided, further, that this Paragraph 6G shall not apply to a merger or consolidation of one of the Company's Subsidiaries with or into any other Person if the surviving Person in such merger or consolidation will be a Subsidiary of the Company following such transaction

Notwithstanding the foregoing, any Subsidiary of the Company may merge with the Company or any other Subsidiary of the Company, provided that the Company or a Subsidiary shall be the surviving Person

6H. Limitation on Asset Sales, Application of Certain Proceeds (a) The Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, in a single transaction or a series of related transactions, sell, lease, transfer or otherwise dispose of or suffer to be sold, leased, transferred, abandoned or otherwise disposed of, all or any part of its assets except

(i) the Company and its Subsidiaries may sell their inventory in the ordinary course of their business and may sell obsolete assets having no or immaterial book value,

(ii) any Subsidiary may sell, lease or otherwise dispose of any or all of its assets to the Company or another Subsidiary of the Company,

(iii) the Company or any Subsidiary thereof may sell, lease or otherwise dispose of assets in transactions not otherwise permitted under clause (i) of this Paragraph 6H (each such sale, lease or other disposition of assets being hereinafter referred to as an "Asset Sale"), so long as (A) the Company demonstrates to the satisfaction of the Noteholders that, after giving effect to such sale, lease or other disposition, the Company and its Subsidiaries remain in compliance with the terms of this Agreement and the Notes, including all covenants, (B) no part of any asset sold, leased or otherwise disposed of consists of any Collateral, (C) the Company receives consideration at the time of such sale or other disposition at least equal to the fair market value, as determined by the Board of Directors, of the assets sold or otherwise disposed of, and (D) not less than 80% of the consideration received by the Company is in the form of cash or Cash Equivalents except to the extent the Company receives as consideration for such Asset Sale rights or assets in a Permitted Acquisition, and

(iv) (a) to the extent that an amount equal to 100% of the Net Proceeds from any Asset Sale is applied by the Company

(A) first, to make an offer to the holders of the Notes to purchase Notes pursuant to and subject to the conditions contained in this Agreement (an "Asset Sale Proceeds Offer"), and

(B) second, to the extent of the balance of such proceeds after application in accordance with clause (A) above, to any other application or use not prohibited by this Agreement

In the event of an Asset Sale Proceeds Offer, the Company will be required to purchase Notes tendered pursuant to an offer by the Company for the Notes at a purchase price of 100% of their principal amount plus accrued but unpaid interest in accordance with the procedures (including prorating in the event of oversubscription) set forth in this Agreement Excluded from the foregoing provisions of this subparagraph 6H(iv) will be (i) proceeds from any asset sale which, when taken together with all proceeds from asset sales occurring within the 12 months preceding such asset sale, do not exceed $2 5 million (which amount shall be carried forward for purposes of determining whether such an offer is required with respect to the asset sale proceeds for any subsequent asset sale), (ii) all proceeds from the sale of the Company's Catalog Business (as constituted on the Date of Closing) as and (iii) all proceeds used to repay Indebtedness secured by the assets sold as required by the terms of such Indebtedness

(b) In the event of an Asset Sale Proceeds Offer, holders of Notes shall have the right, at their option, to require the Company to purchase all or any portion of the Notes on the date (the "Asset Sale Proceeds Payment Date") which is 20 Business Days after the date the Asset Sale Proceeds Notice (as defined below) is required to be mailed (or such later date as is required by applicable law) at the a price equal to 100% of the principal amount thereof, plus accrued and unpaid interest (if any) to the Asset Sale Proceeds Payment Date The Company shall not be required to make an offer to purchase Notes pursuant to this subparagraph 6H(a)(iv) if the Net Proceeds available therefor for are less than $500,000 (which lesser amount shall be carried forward for purposes of determining whether such an offer is required with respect to the Net Proceeds from any subsequent assets sales)

(c) The Company shall send all holders of the Notes, within five Business Days after the occurrence of such Asset Sale, a notice of the occurrence of such Asset Sale (the "Asset Sale Proceeds Notice")

Each Asset Sale Proceeds Notice shall state

(1) the Asset Sale Proceeds Payment Date,

(2) the date by which the right to have Notes purchased must be exercised,

(3) that such right is conditioned on receipt of notice from the holders,

(4) the purchase price, if the right to have Notes purchased is exercised,

(5) a description of the procedure which the holders of Notes must follow to exercise the right to have Notes purchased,

(6) that the purchase is being made pursuant to this Paragraph 6H,

(7) that any Note not tendered will continue to accrue interest if interest is then accruing, and

(8) that, unless the Company defaults in making payment therefor, any Note accepted for purchase shall cease to accrue interest after the Asset Sale Proceeds Payment Date

No failure of the Company to give the foregoing notice shall limit any holder's right to exercise a right to have Notes purchased

(d) In addition to the foregoing, the Company agrees to apply any proceeds received by it from the Seller, Gillette and/or BMS (as each is defined in the Transaction Documents) in connection with any claim by the Company for indemnity or breach or the like under the Vaniqa Acquisition documents to make an offer to repurchase the Notes in the same manner and subject to the same limitations as set forth above as if such offer were an Asset Sale Proceeds Offer

6I Limitation on Restricted Payments The Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, (i) declare or pay any dividend or make any distribution on the Capital Stock of the Company or any of its Subsidiaries (except dividends or stock splits payable solely in Qualified Capital Stock, accretion of stated value or dividends payable on the Preferred Stock or dividends payable solely to the Company or a Subsidiary), (ii) purchase, redeem or otherwise acquire or retire for value any of the Capital Stock or rights to acquire Capital Stock of the Company or its Subsidiaries which are not wholly-owned (including, in each case, any payments made pursuant to any Company or Subsidiary stock appreciation rights plan or reasonable equivalent thereof) other than (A) Preferred Stock in accordance with Sections 9E, 9F and 9G of the certificate of designations relating thereto and (B) restricted shares of Capital Stock issued to officers, directors or employees pursuant to the terms for repurchase thereof upon a termination of employment or directorship, (iii) repay, prepay, redeem, or otherwise acquire or retire for value, make principal payments with respect to or defease, any Debt of the Company or its Subsidiaries that is subordinate or junior in right of payment to the Notes or the Existing Senior Debt (except, with respect to the Existing Senior Debt, for scheduled amortization payments and payment of principal at maturity) (each of the foregoing actions set forth in clauses (i) through (iii) hereof being referred to as a "Restricted Payment") or (iv) make any Investment other than a Permitted Investment

6J Limitation on Restrictions on Distributions from Subsidiaries The Company shall not, and shall not permit any of its Subsidiaries to, create or otherwise cause or permit to exist or become effective any consensual encumbrance or restriction which by its terms encumbers or restricts the ability of any Subsidiary to (a) pay dividends or make any other distributions on its Capital Stock or pay any Debt or other obligation owed to the Com-

pany, (b) make any loans or advances to the Company, (c) transfer any of its Property or assets to the Company, or (d) guarantee any Debt of the Company, except for such encumbrances or restrictions existing under or contemplated by or by reason of (i) applicable law or any applicable rule, regulation or order, (ii) the Documents, (iii) encumbrances or restrictions existing on the Date of Closing to the extent and in the manner such encumbrances and restrictions are in effect on the Date of Closing, (iv) subject to compliance with or a waiver under Paragraph 6A, any instrument governing Acquired Indebtedness, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person (including any Subsidiary of the Person), so acquired, (v) customary non-assignment provisions in leases or other agreements entered in the ordinary course of business and consistent with past practices, (vi) customary restrictions in security agreements or mortgages securing Indebtedness of the Company or a Subsidiary to the extent such restrictions restrict the transfer of the property subject to such security agreements and mortgages, (vii) customary restrictions pursuant to an agreement that has been entered into for the sale or disposition of all or substantially all of the Capital Stock or assets of a Subsidiary of the Company, or (viii) subject to compliance with or a waiver under Paragraph 6A, restrictions contained in Purchase Money Indebtedness or Capitalized Lease Obligations for property acquired in the ordinary course of business that impose restrictions of the nature described in clause (c) above on the property so acquired so long as such restrictions are limited to such property

6K. Limitation on Transactions with Affiliates The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction or series of related transactions (including, without limitation, the purchase, sale, lease or exchange of any Property, assets or the rendering of any service) with, or for the benefit of, any of its Affiliates (each an "Affiliate Transaction") or extend, renew, waive or otherwise modify in any material respect the terms of any Affiliate Transaction entered into prior to the Date of Closing other than Affiliate Transactions on terms that are fair and reasonable to the Company or the Subsidiary, as the case may be, and the terms are no less favorable than those that would reasonably have been obtained in a comparable transaction at such time on an arm's-length basis from a Person that is not an Affiliate of the Company or such wholly-owned Subsidiary All Affiliate Transactions (and each series of related Affiliate Transactions) entered into after the Date of Closing which involve an aggregate fair market value of more than $500,000 shall be approved by the Board of Directors of the Company or such Subsidiary, as the case may be, and approval shall be evidenced by a Board Resolution stating that such Board of Directors has determined that such transaction complies with the standard set forth in the immediately preceding sentence If the Company or any Subsidiary of the Company enters into an Affiliate Transaction (or a series of related Affiliate Transactions) after the Date of Closing that involves an aggregate fair market value of more than $1,000,000, the Company or such Subsidiary, as the case may be, shall, prior to the consummation thereof, obtain a favorable opinion as to the fairness of such transaction or series of related transac-

tions to the Company or the relevant Subsidiary, as the case may be, from a financial point of view, from an Independent Financial Advisor and provide the same to each Noteholder

The foregoing provisions shall not apply to

(1) any Restricted Payment that is not prohibited by the provisions described in Paragraph 6I hereof,

(2) any employment agreement entered into by the Company or any of its Subsidiaries in the ordinary course of business, consistent with the past practice of the Company or such Subsidiary and approved by the independent members of the Board of Directors,

(3) transactions between or among the Company and one or more wholly owned Subsidiaries or among wholly owned Subsidiaries, and

(4) any transaction pursuant to an agreement, arrangement or understanding existing on the Date of Closing and known to the Purchasers

6L Limitation on Ownership of Subsidiaries The Company shall at all times own, either directly or through a wholly-owned Subsidiary, 100% of the Voting Stock of its Subsidiaries existing as of the date hereof Notwithstanding the foregoing, any Subsidiary of the Company may issue shares of its Capital Stock to any Person to the extent but only to the extent that a requirement of law applicable to such Subsidiary requires the issuance of shares of Capital Stock to such Person in order for such Person to qualify for service as a director of such Subsidiary

6M. Modification of Material Agreements Without the consent of the Required Holders, the Company shall not, and shall not permit any of its Subsidiaries to, amend any of its Material Agreements

6N Limitation on Transfer of Assets to Certain Subsidiaries The Company shall not, and shall not permit any of its Subsidiaries to, sell, convey, transfer, lease or otherwise dispose of any of its assets or property to any Subsidiary that is not a wholly-owned Subsidiary of the Company

6O Payments for Consent The Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any holder of any Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Agreement or the Notes unless such consideration is offered to be paid or agreed to be paid to all holders of the

Notes which so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement

6P Limitations on Preferred Stock of Subsidiaries The Company shall not permit any of its Subsidiaries to issue any preferred stock (other than to the Company or any of its Subsidiaries) or permit any Person (other than the Company or one or more Subsidiaries) to hold any such preferred stock

6Q. Use of Proceeds (a) The proceeds from the issuance of the Notes on the Date of Closing shall be used to consummate the Vaniqa Acquisition and pay related fees and expenses

(b) No portion of the proceeds from the issuance of Notes shall be used in any manner which would violate Regulation U, T or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board or to violate the Exchange Act, as in effect on the date or dates of such borrowing and such use of proceeds

6R Business Activities The Company shall not, nor shall the Company cause or permit any of its Subsidiaries to, directly or indirectly, engage in any business other than the marketing, sale or distribution of pharmaceutical or health care products or (unless and until the Catalog Business is sold) products of the type currently sold by the Catalog Business

PARAGRAPH 7 EVENTS OF DEFAULT

7A Acceleration. If any of the following events (each an "Event of Default") shall occur and be continuing for any reason whatsoever (and whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of law or otherwise)

(i) there is a default in the payment of any principal of any of the Notes when the same shall become due, either by the terms thereof or otherwise as herein provided, including, without limitation, as a result of the failure by the Company to redeem or purchase the Notes as required by the provisions of Paragraph 4,

(ii) there is a default in the payment of any interest on any of the Notes, or a default in the payment of other amounts payable under this Agreement, in either case for more than 5 Business Days after the date due,

(iii) the Company or any of its Subsidiaries fails to comply with any provision of Paragraph 6 of this Agreement,

(iv) the Company fails to comply with any of its other covenants or obligations under the Notes or this Agreement and the default continues and is not remedied within 30 days from the date notice is required to be given to Noteholders pursuant to Paragraph 5D,

(v) any representation or warranty made in this Agreement, the other Documents or in any certificate furnished in connection therewith is proven to be false or incorrect in any material respect as of the date made,

(vi) the Company or any of the Subsidiaries shall (A) default in any payment of principal of or interest of any Indebtedness other than the Notes involving payment in respect of obligations in the aggregate of $250,000 or more, beyond the period of grace (not to exceed 30 days), if any, provided in the instrument or agreement under which such Indebtedness was created or (B) default in the observance or performance of any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist the effect of which default or other event or condition is to cause, or to permit the holder or holders or other beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice, if required, such Indebtedness to become due prior to its stated maturity or otherwise payable, which default or other condition shall continue and not be cured under the terms of such Indebtedness within 30 days of its occurrence,

(vii) the Company or any of its Subsidiaries

(a) suffers the entry against it of a judgment, decree or order for relief by a court of competent jurisdiction in an involuntary proceeding commenced under any applicable bankruptcy, insolvency, composition or other similar law of any jurisdiction now or hereafter in effect, including the federal Bankruptcy Code, as from time to time amended, or has any such proceeding commenced against it which remains undismissed for a period of 60 days, or

(b) commences a voluntary case under any applicable bankruptcy, insolvency, composition or similar law now or hereafter in effect, including the federal Bankruptcy Code, as from time to time amended, or applies for or consents to the entry of an order for relief in an involuntary case under any such law, or makes a conveyance, assignment for the benefit of, or enters into any composition with, its creditors generally, or fails generally to pay (or admits in writing its inability to pay) its debts as such debts become due, or takes corporate or other action to authorize any of the foregoing, or

(c) suffers the appointment of or taking possession by any holder of a Lien, receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of all or a substantial part of its assets in a proceeding brought against or initiated by it, and such appointment or taking possession is neither made ineffective nor discharged within 60 days after the making thereof, or such appointment or taking possession is at any time consented to, requested by, or acquiesced to by it, or

(d) suffers the entry against it of a final judgment or judgments for the payment of money in excess of $100,000 which is not fully covered by insurance (less customary deductibles) unless the same is discharged within 30 days after the date of entry thereof or an appeal or appropriate proceeding for review thereof is taken within such period and a stay of execution pending such appeal is obtained, or

(viii) any of the Security Documents shall cease to be in full force and effect, or shall cease to give the Collateral Agent the Liens, rights, powers and privileges for the benefit of the Noteholders purported to be created thereby (other than any such cessation due to an act or failure to act on the part of the Lenders), in favor of the Collateral Agent, superior to and prior to the rights of all third Persons and subject to no Liens other than the Liens permitted by the applicable Security Document, or

(ix) the Company receives a notice of termination or notice that exclusive rights will become non-exclusive under any material license agreement under which the Company receives rights to manufacture, distribute or sell a product and fails to cure such termination or change in license rights on or before a date that falls two thirds of the way through the period between the notice date and the first date on which the other party may terminate such rights or may elect to make an exclusive license non-exclusive, provided that it shall not be an Event of Default hereunder if on or before the date that falls two thirds of the way through such period the Company demonstrates to the reasonable satisfaction of the Purchasers that, on a pro forma basis after taking into account the termination of such license rights or the conversion of such rights from exclusive to non-exclusive rights, the Company continues to satisfy the covenants set forth in Section 6B (calculated for the most recent four consecutive Fiscal Quarters and compared to the required minimum Actual EBITDA amount for such Fiscal Quarters) and Sections 6C and 6D (determined as of such date), provided further that the Purchasers agree to negotiate with the Company in good faith to determine the effects for purposes of the preceding proviso of a change from exclusive to non-exclusive rights to a product for a period of one week,

then (a) if such event is an Event of Default specified in clause (i) or (ii) of this Paragraph 7A, any Noteholder (other than the Company or any of its Subsidiaries or Affiliates) may at its option, by notice in writing to the Company, declare such Note to be, and such Note shall thereupon be and become, immediately due and payable together with interest accrued thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Company, (b) if such event is an Event of Default specified in clause (vii)(a), (vii)(b) or (vii)(c) of this Paragraph 7A, all of the Notes at the time outstanding shall automatically become immediately due and payable at par together with interest accrued thereon, without presentment, demand, protest or notice of any kind (including, without limitation, notice of intent to accelerate and notice of acceleration of maturity), all of which are hereby waived by the Company, and (c) if such event is any other Event of Default, the holders of at least 25% of the aggregate principal amount of the Notes then outstanding may at their option, by notice in writing to the Company, declare all of the Notes to be, and all of the Notes shall thereupon be and become, immediately due and payable together with interest accrued thereon with respect to each Note, without presentment, demand, protest or other notice of any kind (including, without limitation, notice of intent to accelerate), all of which are hereby waived by the Company

7B. Rescission of Acceleration At any time after any or all of the Notes shall have been declared immediately due and payable pursuant to Paragraph 7A, the Required Holders may, by notice in writing to the Company, rescind and annul such declaration and its consequences if (i) the Company shall have paid all overdue interest on the Notes, the principal of any Notes which have become due otherwise than by reason of such declaration, and interest on such overdue interest and overdue principal at the rate specified in the Notes, (ii) the Company shall not have paid any amounts which have become due solely by reason of such declaration, (iii) all Events of Default and Defaults, other than non-payment of amounts which have become due solely by reason of such declaration, shall have been cured or waived pursuant to Paragraph 11C, and (iv) no judgment or decree shall have been entered for the payment of any amounts due pursuant to the Notes or this Agreement No such rescission or annulment shall extend to or affect any subsequent Event of Default or Default or impair any right arising therefrom

7C. Notice of Acceleration or Rescission Whenever any Note shall be declared immediately due and payable pursuant to Paragraph 7A or any such declaration shall be rescinded and annulled pursuant to Paragraph 7B, the Company shall forthwith give written notice thereof to the holder of each Note at the time outstanding

7D. Other Remedies If any Event of Default or Default shall occur and be continuing, the holder of any Note may proceed to protect and enforce its rights under this Agreement and such Note by exercising such remedies as are available to such holder in respect thereof under applicable law, either by suit in equity or by action at law, or both,

whether for specific performance of any covenant or other agreement contained in this Agreement or in aid of the exercise of any power granted in this Agreement No remedy conferred in this Agreement upon the holder of any Note is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy conferred herein or now or hereafter existing at law or in equity or by statute or otherwise

PARAGRAPH 8 REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

To induce each Purchaser to enter into this Agreement and to purchase the Notes and the Warrants, the Company represents and warrants to and agrees with each Purchaser, as of the date hereof and as of the Date of Closing, that

(a) The Company and its Subsidiaries have been duly incorporated, formed or organized, as the case may be, and each of the Company and its Subsidiaries is validly existing in good standing as a corporation, limited liability company or a limited partnership, as the case may be, under the laws of its jurisdiction of incorporation, formation or organization, with all requisite power and authority as a corporation, limited liability company or limited partnership, as the case may be, to own its properties and conduct its business as now conducted (as described in the Exchange Act Documents) and is duly qualified to do business as a corporation or foreign limited liability company in good standing in all other jurisdictions where the ownership or leasing of its properties or the conduct of its business requires such qualification, except where the failure to be so qualified could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, as of the Date of Closing and after giving pro forma effect to the closing of the Transaction, the Company will have the authorized, issued and outstanding capitalization set forth in Schedule 8A-1, except as set forth in Schedule 8A-2 hereto, the Company does not have any subsidiaries or own directly or indirectly any of the capital stock or other equity or long-term debt securities of or have any equity interest in any other person, all of the outstanding shares of capital stock or membership interests, as the case may be, of the Company and its Subsidiaries have been duly authorized and validly issued, are fully paid and nonassessable and were not issued in violation of any preemptive or similar rights, all of the outstanding shares of capital stock or membership interests, as the case may be, of the Subsidiaries are owned free and clear of all liens, encumbrances, equities and restrictions on transferability or voting, all of the outstanding shares of capital stock or membership interests, as the case may be, of the Subsidiaries are owned, directly or indirectly, by the Company, except as set forth in this Agreement and in Schedule 8A-3, no options, warrants or other rights to purchase from the Company or any Subsidiary, or agreements or other obligations of the Company or any Subsidiary to issue

or other rights to convert any obligation into, or exchange any securities for, shares of capital stock of or ownership interests (including the Warrants) in the Company or any Subsidiary are outstanding and no holder of securities of the Company or any Subsidiary is entitled to have such securities registered under the Securities Act, there is no agreement, understanding or arrangement among the Company or any Subsidiary and each of their respective members or stockholders, as the case may be, or any other person relating to the ownership or disposition of any capital stock or membership interest (including any Warrant), as the case may be, of the Company or any Subsidiary or the election of directors or other governing persons of the Company or any Subsidiary or the governance of the Company's or any Subsidiary's affairs, and, if any, such agreements, understandings and arrangements will not be breached or violated as a result of the execution and delivery of, or the consummation of the transactions contemplated by, this Agreement, the other Documents and the Transaction Documents

(b) The Company has all requisite power and authority as a corporation to execute, deliver and perform its obligations under the Notes The Notes have each been duly and validly authorized by the Company for issuance and, when executed by the Company in accordance with the provisions of this Agreement, and delivered to and paid for by the Purchasers in accordance with the terms hereof, will have been duly executed, issued and delivered and will constitute valid and legally binding obligations of the Company, entitled to the benefits of this Agreement and enforceable against the Company in accordance with their terms except that the enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to or affecting creditors' rights generally or (ii) general principles of equity and the discretion of the court before which any proceeding therefor may be brought (regardless of whether such enforcement is considered in a proceeding at law or in equity) (collectively, the "Enforceability Exceptions"), the Notes are in the form contemplated by this Agreement

(c) The Company has all requisite power and authority as a corporation to execute, deliver and perform its obligations under the Warrants The Warrants have each been duly and validly authorized by the Company for issuance and, when executed by the Company in accordance with the provisions of this Agreement, and delivered to and paid for by the Purchasers in accordance with the terms hereof, will have been duly executed, issued and delivered and will constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms except that the enforcement thereof may be limited by the Enforceability Exceptions, the Warrants are in the form contemplated by this Agreement

(d) The Company has all requisite power and authority as a corporation to execute, deliver and perform its obligations under this Agreement (including without limitation the issuance of the Notes and the Warrants) This Agreement has been duly and validly authorized by the Company, and, when executed and delivered by the Company, will constitute a valid and legally binding agreement of the Company, enforceable against the Company in accordance with its terms except that (i) the enforcement thereof may be limited by the Enforceability Exceptions and (ii) any rights to indemnity or contribution hereunder may be limited by federal and state securities laws and public policy considerations

(e) The Company has all requisite power and authority as a corporation to execute, deliver and perform its obligations under each of the Security Documents Each Security Document has been duly and validly authorized by the Company and, when executed by the Company and delivered to the Purchasers in accordance with the terms hereof, will have been duly executed and delivered and will constitute a valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms except that the enforcement thereof may be limited by the Enforceability Exceptions and no representation or warranty is made by the Company hereunder or in the Security Documents with respect to the validity or enforceability of the Security Documents with respect to the rights, if any, of the holders of the Preferred Stock thereunder, including with respect the creation or perfection of a security interest, and the relative priority of any such security interest, or the effect of the federal Bankruptcy Code and comparable provisions of state law, and other applicable antifraud laws, securities laws, usury laws or public policy considerations on the rights, if any, of such holders under the Security Documents (collectively, the "Preferred Security Interest Exceptions")

(f) The Security Agreement is effective to create in favor of the Collateral Agent, for the benefit of the Purchasers with respect to the Notes, a legal, valid and enforceable security interest in the Collateral and, when (i) the Security Agreement is filed in the United States Patent and Trademark Office and the United States Copyright Office and (ii) such other filings which are necessary to be made to create the security interest pursuant to the Security Agreement, the Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in such Collateral (other than as defined in the Security Agreement), in each case prior and superior in right to any other person, subject to no other Liens except for Liens expressly permitted to exist on such Collateral by the terms of the Security Agreement, provided, however, that the foregoing representation and warranty is expressly subject to the Preferred Security Interest Exceptions

(g) The Company has all requisite power and authority as a corporation to execute, deliver and perform its obligations under the Registration Rights Agreement The Registration Rights Agreement has been duly and validly authorized by the Company and, when executed by the Company and delivered to the Purchasers in accordance with the terms hereof, will have been duly executed and delivered and will constitute a valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms except that (i) the enforcement thereof may be limited by the Enforceability Exceptions and (ii) any rights to indemnity or contribution hereunder may be limited by federal and state securities laws and public policy considerations

(h) The Company has all requisite power and authority as a corporation to issue the shares of common stock issuable upon exercise of the Warrants (the "Warrant Shares") The Warrant Shares have been duly and validly authorized by the Company and, when issued by the Company in accordance with the provisions of the Warrants, will be fully paid and nonassessable and will not be issued in violation of any preemptive or similar rights and will be issued free and clear of all liens, encumbrances, equities and restrictions on transferability or voting other than those imposed under applicable federal and state securities laws or otherwise granted by the Purchasers

(i) (i) The Company has delivered to the Purchasers a true and correct copy of each of the Transaction Documents that have been executed and delivered prior to the date of this Agreement and each other Transaction Document in the form substantially as it will be executed and delivered on or prior to the Date of Closing, together with all related agreements and all schedules and exhibits thereto, and there have been no amendments, alterations, modifications or waivers of any of the provisions of any of the Transaction Documents since their date of execution or from the form in which any such Transaction Document has been delivered to the Purchasers, and (ii) to the Company's knowledge, there exists no event or condition that would constitute a default or an event of default (in each case as defined in each of the Transaction Documents) under any of the Transaction Documents that could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect or affect the ability of the Company or its Subsidiaries to consummate the Vaniqa Acquisition

(j) No consent, approval, authorization, license, qualification, exemption or order of any court or governmental agency or body (including, without limitation, the Food and Drug Administration (the "FDA")) or third party is required for the performance of this Agreement or the Notes or the Warrants by the Company, or for the consummation by the Company of the Transaction or any transaction contemplated

hereby, or the application of the proceeds of the issuance of the Notes as described in this Agreement, except as has already been acquired or as may be required under state securities or "Blue Sky" laws in connection with the purchase of the Notes by the Purchasers, all such consents, approvals, authorizations, licenses, qualifications, exemptions and orders which are required to be obtained by the Date of Closing have been obtained or made, as the case may be, and are in full force and effect and not the subject of any pending or, to the knowledge of the Company, threatened attack by appeal or direct proceeding or otherwise

(k) None of the Company or its Subsidiaries is (i) in violation of its certificate of incorporation or bylaws (or similar organizational document, including any certificate of formation and operating agreement), (ii) in breach or violation of any statute, judgment, decree, order, rule or regulation (including, without limitation, those relating to the development, commercialization and sale of pharmaceutical and biotechnology products) applicable to any of them or any of their properties or assets (including, without limitation, any order, rule or regulation of the FDA, the Securities and Exchange Commission and the National Association of Securities Dealers, Inc), which breach or violation could, individually or in the aggregate, have a Material Adverse Effect, or (iii) except as set forth in Schedule 8K, in default (nor has any event occurred which with notice or passage of time, or both, would constitute a default) in the performance or observance of any obligation, agreement, covenant or condition contained in this Agreement or the Notes or any Transaction Document or any other contract, indenture, mortgage, deed of trust, loan agreement, note, lease, license, permit, certificate or agreement or instrument to which it is a party or to which it is subject, which default could, individually or in the aggregate, have a Material Adverse Effect

(l) The execution, delivery and performance by the Company of this Agreement (including without limitation, the issuance of the Notes and the Warrants), the other Documents and the Transaction Documents and the consummation by the Company of the transactions contemplated hereby and thereby and the fulfillment of the terms hereof and thereof will not (a) violate, conflict with or constitute or result in a breach of or a default under (or an event that, with notice or lapse of time, or both, would constitute a breach of or a default under) any of (i) the terms or provisions of any contract, indenture, mortgage, deed of trust, loan agreement, note, lease, license, permit, certificate or agreement or instrument to which any of the Company or its Subsidiaries is a party or to which any of their respective properties or assets are subject, (ii) the certificate of incorporation or bylaws of any of the Company or its Subsidiaries (or similar organizational document, including any certificate of formation and operating agreement) or (iii) (assuming compliance with all applicable state securities or "Blue Sky" laws and the accuracy of the representations and warranties of the Pur-

chasers in Paragraph 9 hereof) any statute, judgment, decree, order, rule or regulation of any court or governmental agency or other body applicable to the Company or its Subsidiaries or any of their respective properties or assets (including, without limitation, the rules and regulations of the FDA), that, in each case described in this clause (a), could reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect, or (b) result in the imposition of any lien upon or with respect to any of the properties or assets now owned or hereafter acquired by the Company or any of their Subsidiaries, other than as contemplated by the Security Agreements

(m) The audited consolidated financial statements contained in the Exchange Act Documents present fairly in all material respects the consolidated financial position, results of operations and cash flows of such entities at the dates and for the periods to which they relate and have been prepared in accordance with GAAP applied on a consistent basis except as otherwise stated therein, the interim unaudited consolidated financial statements contained in the Exchange Act Documents and delivered to the Purchasers as a closing condition and attached hereto as Schedule 8M present fairly in all material respects the consolidated financial position, results of operations and cash flows of such entities at the dates and for the periods to which they relate subject to year-end audit adjustments and have been prepared in accordance with GAAP applied on a basis substantially consistent with the audited consolidated financial statements included therein, and Ernst & Young LLP, which has examined certain of such financial statements, is an independent certified public accounting firm within the meaning of the Securities Act

(n) The pro forma financial statements and other pro forma financial information (including the notes thereto) attached hereto as Schedule 8N have been properly computed on the bases described therein, and the assumptions used in the preparation of the pro forma financial statements and other pro forma financial information are reasonable and the adjustments used therein are appropriate to give effect to the transactions or circumstances referred to therein

(o) The Projections have been prepared by the Company and are based on the reasonable and good faith estimates and assumptions of the Company and the Company has no reason to believe that such estimates and assumptions are not fair and reasonable

(p) There is not pending or, to the best knowledge of the Company, threatened any action, suit, proceeding, inquiry or investigation, governmental or otherwise, to which any of the Company or its Subsidiaries is a party, or to which their respective properties or assets are subject, before or brought by any court, arbitrator or governmental agency or body, that, if determined adversely to the Company or any such Sub-

sidiary could, individually or in the aggregate, have a Material Adverse Effect or that seeks to restrain, enjoin, prevent the consummation of or otherwise challenge the Vaniqa Acquisition or the issuance or sale of the Notes or the Warrants hereunder or the application of the proceeds therefrom or the other transactions consummated as of the date of this Agreement

(q) Except as set forth on Schedule 8Q, the Company and its Subsidiaries possess, and upon consummation of the Vaniqa Acquisition will possess, all licenses, permits, certificates, consents, orders, approvals and other authorizations from, and have made all declarations and filings with, all federal, state, local and other governmental authorities (including, without limitation, the FDA), all self-regulatory organizations and all courts and other tribunals, presently required or necessary to own or lease, as the case may be, and to operate its respective properties and to carry on its respective businesses as now or proposed to be conducted, except where the failure to obtain such licenses, permits, certificates, consents, orders, approvals and other authorizations, or to make all such declarations and filings, could not, individually or in the aggregate, have a Material Adverse Effect, and the Company and its Subsidiaries have not received any notice of any proceeding relating to revocation or modification of any such license, permit, certificate, consent, order, approval or other authorization

(r) To the best knowledge of the Company, none of the Company or its Subsidiaries has, and, after giving effect to the Vaniqa Acquisition and the issuance and sale of the Notes, will not have, any liability for any prohibited transaction or funding deficiency or any complete or partial withdrawal liability, or other liability under Title IV of ERISA, with respect to any pension, profit sharing or other plan which is subject to ERISA, to which any of the Company or its Subsidiaries makes or ever has made a contribution and in which any employee of any of the Company or its Subsidiaries is or has ever been a participant With respect to such plans, the Company and its Subsidiaries are, and, after giving effect to the Vaniqa Acquisition and the issuance and sale of the Notes, will be, in compliance in all material respects with all provisions of ERISA

(s) The Exchange Act Documents, as of the date such filings were made, did not contain any untrue statement of a material fact or omit to state a material fact necessary to make such information or statements not misleading All information provided to the Purchasers about the Company, its Subsidiaries and its existing business, financial conditions and results of operations, and all statements made to the Purchasers about the Company, did not when made and do not as of the date hereof contain or include any untrue statement of a material fact or omit to state a material fact necessary to make such information or statements, in the light of the circum-

stances under which they were made or given, not misleading To the knowledge of the Company, all information provided to the Purchasers, and all statements made to the Purchasers, about the Seller, Gillette, BMS and Vaniqa (as such terms are defined in the Vaniqa Acquisition Agreements), did not when made and do not as of the date hereof contain or include any untrue statement of a material fact or omit to state a material fact necessary to make such information or statements, in the light of the circumstances under which they were made or given, not misleading The statistical and market and industry-related data included therein are based on or derived from sources which the Company believes to be reliable and accurate or represent the Company's good faith estimates that are made on the basis of data derived from such sources The operating data included therein are based on or derived from internal records of the Company or the sellers of Vaniqa, as the case may be, which the Company has no reason to believe are not reliable and accurate

(t) Since March 31, 2002, except as contemplated by the Documents and the Transaction Documents, (A) the Company has not (i) made, paid or declared any dividend or distribution to any equity holder (in such capacity) or redeemed any of its capital stock, (ii) varied its business plan or practices, in any material respect, from past practices, (iii) entered into any financing, joint venture, license or similar arrangement that would limit or restrict its ability to perform its obligations hereunder and under each of the other Documents or (iv) suffered or permitted to be incurred any liability or obligation or any encumbrance against any of its properties or assets that would limit or restrict its ability to perform its obligations hereunder and under each of the other Documents, and (B) there has not been any change or development which has had, or could reasonably be expected to have, a Material Adverse Effect Without limiting the generality of the foregoing, since March 31, 2002, there has not been (1) any lapse of any of the Company's trade secrets, inventions, patents, patent applications or continuations (in whole or in part), trademarks, trademark registrations, service marks, service mark registrations, copyrights, copyright registrations, or any application therefor or filing in respect thereof (collectively, and together with any and all know-how, trade secrets and proprietary business or technology information, the "Intellectual Property"), (2) any loss of the services of any of the key officers or key employees of the Company, (3) any incurrence of or entry into any liability, mortgage, encumbrance, commitment or transaction, including without limitation, any borrowing (or assumption or guarantee thereof) or guarantee of a third party's obligations, or capital expenditure (or lease in the nature of a conditional purchase of capital equipment) in excess of $100,000, other than in the ordinary course of business, (4) any material change by the Company in accounting methods or principles, or (5) any change in the assets, liabilities, condition (financial or otherwise), results or operations or prospects of the Company from those reflected on the Exchange Act Documents, except changes in the ordinary course of business and changes that have not had or

could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect

(u) Since March 31, 2002, the Company has not incurred or suffered any liability or obligation, matured or unmatured, contingent or otherwise, except in the ordinary course of business and except any such liability or obligation that has not had and could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect

(v) The Company owns or possesses sufficient legal rights to use pursuant to license, sublicense, agreement or permission all Intellectual Property used in the operation of its business as presently or proposed to be conducted, in each case, subject to no encumbrances except as set forth in the Exchange Act Documents All of the Intellectual Property which is owned by the Company is owned free and clear of all encumbrances, except for the liens set forth on Schedule 8V, none of the Company's rights in or use of the Intellectual Property has been or, to the Company's knowledge, is currently threatened to be challenged, no current or currently planned product based upon the Company's Intellectual Property would infringe or otherwise conflict with any patent, trademark, service mark, trade name or copyright of any other person or entity issued or pending on the Date of Closing if the Company were to distribute, sell, market or manufacture such products, there are no actions, suits or judicial proceedings pending relating to patents or proprietary information to which the Company is a party or of which any property of the Company is subject, and the Company is not aware of any actual or threatened claim by any person or entity alleging any infringement or other conflict with the Company of a patent, trademark, service mark, trade name or copyright possessed by such person or entity, or of any facts or circumstances which could render any Intellectual Property invalid or inadequate to protect the interest of the Company therein None of such Intellectual Property, whether foreign or domestic, has been canceled, abandoned, or otherwise terminated in a manner which has had, or could reasonably be expected to have, a Material Adverse Effect

(w) The patent applications, if any, filed by or on behalf of the Company (the "Patent Applications") have been properly prepared and filed on behalf of the Company, each of the Patent Applications and each of the patents that constitute Intellectual Property (the "Patents") is assigned or licensed to the Company, except as set forth in the Exchange Act Documents, no other entity or individual has any right or claim in any Patent, Patent Application or any patent to be issued therefrom, and, to the knowledge of the Company, each of the Patent Applications discloses potentially patentable subject matter

(x) The Phase IV human clinical trials conducted by or on behalf of the Company or in which the Company has participated relating to Esclim are the only human clinical trials currently being conducted by or on behalf of the Company, and, to the best of the Company's knowledge, such trials were, and, if still pending, are being, conducted in accordance with experimental protocols, procedures and controls pursuant to accepted professional scientific standards Other than as set forth on Schedule 8X, the Company has no knowledge of any studies or tests, the results of which call into question the results of the clinical trials providing the basis for approval of any of its products or Vaniqa Other than as set forth on Schedule 8X, the Company has not received any notices or correspondence from the FDA or any other governmental agency requiring the termination, suspension or modification of any clinical trials conducted by, or on behalf of, the Company or in which the Company has participated or that otherwise relate to its products or Vaniqa All human clinical trials previously conducted by or on behalf of the Company, while conducted by or on behalf of the Company, were conducted in accordance with experimental protocols, procedures and controls pursuant to accepted professional scientific standards

(y) There are no legal or governmental proceedings (including, without limitation, proceedings before the FDA), nor are there any contracts or other documents that would be required to be disclosed pursuant to the Exchange Act that are not so disclosed

(z) The relationships of the Company and its Subsidiaries with suppliers, sales representatives, customers and others having business relationships with them are generally satisfactory, and there is no indication of any intention by any party thereto to terminate or modify the terms of any such relationship Without limiting the generality of the foregoing, no supplier has notified or otherwise indicated to the Company or any of its Subsidiaries that it intends to stop, or decrease the rate of, or, other than publicly announced generally applicable price increases, materially increase the cost of, its supply of materials, products or services used by the Company and its Subsidiaries, and no supplier has, since January 1, 2002, ceased, materially decreased the rate of, or materially raised the cost of, any such materials, products or services

(aa) All contracts that are material to the conduct of the Company's business (including without limitation all supply contracts) constitute legal, valid and binding obligations of the Company and, to the best knowledge of the Company, each of the other parties thereto and are enforceable against the Company and, to the best knowledge of the Company, each of the other parties thereto in accordance with their terms, subject to the Enforceability Exceptions and, to the extent any such contracts contain indemnification or contribution provisions, subject to limitations under federal and state securities laws and public policy considerations, and no act, omission or course

of conduct has occurred that would impair the enforceability of any such material contract against the other party or parties thereto As regards such material contracts, the Company (A) is not in default (nor is there any event which with notice or lapse of time or both would constitute a default), and (B) has not received notification (i) that any such material contract is about to be terminated or otherwise modified (ii) alleging that the Company or any employee thereof has breached any obligation under, or violated any term of, any such material contract

(bb) The Company and its Subsidiaries have good and marketable title to all real property described in the Company's filings under the Exchange Act as being owned by them and good and marketable title to the leasehold estate in the real property described therein as being leased by them, free and clear of all liens, charges, encumbrances or restrictions, except, in each case, such as could not, individually or in the aggregate, have a Material Adverse Effect All leases, contracts and agreements, including those referred to in the Exchange Act Documents, to which the Company or any of its Subsidiaries is a party or by which any of them is bound are valid and enforceable against the Company or any such Subsidiary, are, to the knowledge of the Company, valid and enforceable against the other party or parties thereto and are in full force and effect subject, in each case, to the Enforceability Exceptions except as could not, individually or in the aggregate, have a Material Adverse Effect

(cc) The Company and its Subsidiaries have filed all necessary federal, state and foreign income and franchise tax returns, except where the failure to so file such returns could not, individually or in the aggregate, have a Material Adverse Effect, and have paid all taxes shown as due thereon, and other than tax deficiencies which the Company or any Subsidiary is contesting in good faith and for which adequate reserves have been provided in accordance with GAAP, there is no tax deficiency that has been asserted against the Company or any Subsidiary that could, individually or in the aggregate, have a Material Adverse Effect

(dd) (i) Immediately after the consummation of the Vaniqa Acquisition and the other transactions contemplated by this Agreement, the other Documents and the Transaction Documents, the fair value and present fair saleable value of the assets of each of the Company and its Subsidiaries will exceed the sum of their stated liabilities and identified contingent liabilities, and (ii) the Company and its Subsidiaries are not, nor will they be, after giving effect to the execution, delivery and performance of this Agreement, the other Documents and the Transaction Documents, and the consummation of the Vaniqa Acquisition and the other transactions contemplated hereby and thereby, (a) left with unreasonably small capital with which to carry on their business as it is proposed to be conducted, (b) unable to pay their debts (contingent or otherwise) as they mature or (c) otherwise insolvent

(ee) Except as could not, individually or in the aggregate, have a Material Adverse Effect, (A) each of the Company and its Subsidiaries is in compliance with all applicable Environmental Laws (as defined below), (B) each of the Company and its Subsidiaries has made all filings and provided all notices required under any applicable Environmental Law, and has all permits, authorizations and approvals required under any applicable Environmental Laws and is in compliance with their requirements, (C) there is no civil, criminal or administrative action, suit, demand, claim, hearing, notice of violation, investigation, proceeding, notice or demand letter or request for information pending or, to the knowledge of the Company, threatened against the Company or any of its Subsidiaries under any Environmental Law, (D) no lien, charge, encumbrance or restriction has been recorded under any Environmental Law with respect to any assets, facility or property owned, operated, leased or controlled by the Company or any of its Subsidiaries, (E) neither the Company nor any of its Subsidiaries have received notice that they have been identified as a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any comparable state law, and (F) no property or facility of the Company or any of its Subsidiaries is (i) listed or proposed for listing on the National Priorities List under CERCLA or (ii) listed in the Comprehensive Environmental Response, Compensation and Liability Information System List promulgated pursuant to CERCLA, or on any comparable list maintained by any state or local governmental authority

For purposes of this Agreement, the following terms shall have the following meanings "Environmental Law" means any federal, state, local or municipal statute, law, rule, regulation, ordinance, code, policy or rule of common law and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment binding on the Company or its Subsidiaries, relating to pollution or protection of the environment or health or safety or any chemical, material or substance, that is subject to regulation thereunder "Environmental Claims" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, notices of responsibility, information requests, liens, notices of noncompliance or violation, investigations or proceedings relating in any way to any Environmental Law

(ff) Neither the Company nor its Subsidiaries are, or immediately after the Date of Closing will be, required to register as an "investment company" or a company "controlled by" an "investment company" within the meaning of the Investment Company Act of 1940, as amended

(gg) Neither the Company nor its Subsidiaries nor any of such entities' directors, officers, employees, agents or controlling persons have taken, directly or indi-

rectly, any action designed, or that might reasonably be expected, to cause or result, under the Securities Act or otherwise, in, or that has constituted, stabilization or manipulation of the price of the Notes or the Warrants, provided that no representation or warranty is made as to the activities of any purchaser of the Notes or any person acting on such purchaser's behalf

(hh) Neither the Company, its Subsidiaries nor any of their respective Affiliates (as defined in Rule 501(b) of Regulation D under the Securities Act) directly, or through any agent, (i) sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of any "security" (as defined in the Securities Act) which is or could be integrated with the sale of the Notes and the Warrants in a manner that would require the registration under the Securities Act of the Notes or the Warrants or (ii) engaged in any form of general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act) in connection with the offering of the Notes and the Warrants or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act, provided that no representation or warranty is made as to the activities of any purchaser of the Notes and the Warrants or any person acting on such purchaser's behalf Assuming the accuracy of the representations and warranties of the Purchasers in Paragraph 9 hereof, the offer and sale of the Notes and Warrants pursuant to this Agreement are exempt from the registration and prospectus delivery requirements of the Securities Act

(ii) No securities of the Company are of the same class (within the meaning of Rule 144A under the Securities Act) as the Notes and listed on a national securities exchange registered under Section 6 of the Exchange Act, or quoted in a U S automated inter-dealer quotation system

(jj) There is no strike, labor dispute, slowdown or work stoppage with the employees of the Company or any of its Subsidiaries which is pending or, to the knowledge of the Company or any of its Subsidiaries, threatened

(kk) Each of the Company and its Subsidiaries carries insurance in such amounts and covering such risks as in its reasonable determination is adequate for the conduct of its business and the value of its properties

(ll) Each of the Company and its Subsidiaries (i) makes and keeps accurate books and records and (ii) maintains internal accounting controls which provide reasonable assurance that (A) transactions are executed in accordance with management's authorization, (B) transactions are recorded as necessary to permit preparation of its financial statements in conformity with GAAP and to maintain accountability for its assets, (C) access to its assets is permitted only in accordance with management's

authorization and (D) the reported accountability for its assets is compared with existing assets at reasonable intervals

(mm) None of the Company, its Subsidiaries, any of their respective Affiliates or any person acting on its or their behalf (other than any purchaser of the Notes or any other person acting on such purchaser's behalf) has engaged in any directed selling efforts (as that term is defined in Regulation S under the Securities Act ("Regulation S")) with respect to the Notes and the Warrants and each of the Company, its Subsidiaries and their respective Affiliates and any person acting on its or their behalf (other than the Purchasers and any other person acting on their behalf) has acted in accordance with the offering restrictions requirement of Regulation S

PARAGRAPH 9 REPRESENTATIONS AND COVENANTS OF THE PURCHASERS

(a) Each Purchaser, severally but not jointly, hereby represents and warrants as to itself as follows

(i) Such Purchaser has all requisite power and authority to execute, deliver and perform its obligations under this Agreement This Agreement has been duly and validly authorized by such Purchaser, and, when executed and delivered by such Purchaser, will constitute a valid and legally binding agreement of such Purchaser, enforceable against such Purchaser in accordance with its terms, except as may be limited by the Enforceability Exceptions

(ii) The Notes and Warrants to be acquired by such Purchaser pursuant to this Agreement are being or will be acquired for its own account and with no intention of distributing or reselling such securities or any part thereof in any transaction that would be in violation of the securities laws of the United States of America, or any state, without prejudice, however, to its right at all times to sell or otherwise dispose of all or any part of the Securities, under an effective registration statement under the Securities Act, or under an exemption from such registration available under the Securities Act, and subject, nevertheless, to the disposition of its property being at all times within its control If such Purchaser should in the future decide to dispose of any of the Notes and Warrants, such Purchaser understands and agrees that it may do so only in compliance with the Securities Act and applicable state securities laws, as then in effect

(iii) Such Purchaser acknowledges that investment in the Notes and Warrants involves a high degree of risk, and represents that it is able to hold the Notes and Warrants, and securities which may underlie them, for an indefinite period of time and to suffer a complete loss of its investment

(iv) Such Purchaser is an "accredited investor" as such term is defined in Rule 501 under the Securities Act

(b) Each Purchaser understands and acknowledges to the Company that

(i) the offering and sale of the Notes and the Warrants is intended to be exempt from registration under the Securities Act by virtue of the provisions of Section 4(2) of the Securities Act,

(ii) there is no existing public or other market for the Notes or the Warrants and there can be no assurance that such Purchaser will be able to sell or dispose of its Notes or Warrants,

(iii) it is aware that federal and state securities laws prohibit any person who has material non-public information about an issuer from purchasing or selling securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities, provided, however, that an affiliate of any Purchaser may buy or sell securities of the Company so long as such affiliate has not had access to any material non-public information, and

(iv) the Projections are not to be viewed as facts, actual results may differ from such statements, and the differences may be material

(c) Each Purchaser covenants to the Company that if it offers, sells or otherwise transfers, pledges or hypothecates all or any part of the Notes or the Warrants (other than pursuant to an effective registration statement under the Securities Act or pursuant to Rule 144 or, in the case of the Notes only, Rule 144A), it shall deliver to the Company a written opinion of counsel reasonably satisfactory to the Company (who may be in-house or special counsel), reasonably satisfactory in form and substance to the Company, that an exemption from the registration requirements of the Securities Act and applicable state securities laws is available, provided, however, that such an opinion is not required in the event that any holder of Notes or Warrants pledges Notes or Warrants held by it, in whole or in part, to its lenders or securityholders, or any trustee or agent therefor, or transfers Notes or Warrants held by it to any entity formed for the purpose of holding the Notes or Warrants and/or other securities held by such holder Upon original issuance thereof, and until such time as the same is no longer a Restricted Security, each certificate evidencing the Notes (and all securities issued in exchange therefor or substitution thereof) shall bear a legend in substantially the following form

THE NOTE (OR ITS PREDECESSOR) EVIDENCED HEREBY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM

REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "ACT"), AND THE NOTE EVIDENCED HEREBY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE NOTE EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION PROVIDED BY RULE 144A UNDER THE ACT. THE HOLDER OF THE NOTE EVIDENCED HEREBY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) SUCH NOTE MAY BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (1)(a) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE ACT IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, OR IN ACCORDANCE WITH RULE 144 UNDER THE ACT, OR PURSUANT TO ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE ACT (AND BASED UPON AN OPINION OF COUNSEL), (b) TO THE ISSUER OR ANY OF ITS SUBSIDIARIES, (c) OUTSIDE THE UNITED STATES IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 904 UNDER THE ACT OR (d) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT AND (2) IN EACH CASE, IN ACCORDANCE WITH THE APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THE NOTE EVIDENCED HEREBY OF THE RESALE RESTRICTIONS SET FORTH IN (A) ABOVE

PARAGRAPH 10. DEFINITIONS.

For the purpose of this Agreement, the following terms shall have the meanings specified with respect thereto below (such meanings to be equally applicable to both the singular and plural forms of the terms defined)

"**Acquired Indebtedness**" means Indebtedness of a Person (including a Subsidiary) existing at the time such Person becomes a Subsidiary of such specified Person or is merged into or consolidated with any other Person or which is assumed in connection with the acquisition of assets from such Person and, in each case, incurred in compliance with or pursuant to a waiver under Paragraph 6A and not incurred by such Person in connection with, or

in anticipation or contemplation of, such Person becoming a Subsidiary or such merger, consolidation or acquisition

"**Actual EBITDA**" means, with respect to any Person and its Subsidiaries, for any period, an amount equal to (a) the sum of (1) Consolidated Net Income for such period, plus (2) the provision for taxes for such period based on income or profits to the extent such income or profits were included in computing Consolidated Net Income and any provision for taxes utilized in computing net loss under clause (1) hereof, plus (3) Consolidated Interest Expense, provided, however, for purposes of this definition only, that dividends or distributions paid on Disqualified Capital Stock shall not be included in the definition of Consolidated Interest Expense to the extent such dividends or distributions have not been included in the computation of Consolidated Net Income for such period, plus (4) depreciation for such period on a consolidated basis, plus (5) amortization of intangibles for such period on a consolidated basis, plus (6) the accretion of stated value and dividends, if any, on the Preferred Stock and dividends on any other class or series of preferred stock, plus (7) any other non-cash items reducing Consolidated Net Income for such period, minus (b) the sum of (1) interest income for such period, and (2) all non-cash items increasing Consolidated Net Income for such period

"**Additional Notes**" shall have the meaning specified in Paragraph 1

"**Adjusted Net Worth**" means, with respect to any Person, the Net Worth of such Person, at any time, plus the sum of (i) cumulative charges associated with any write-downs or write-offs of impaired assets or assets previously used in discontinued operations made in accordance with FASB 142 under GAAP incurred by such Person since July 1, 2002 and (ii) cumulative charges associated with the early extinguishment of debt incurred by such Person since July 1, 2002

"**Affiliate**" shall mean, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person, including, but not limited to, any holder of 10% or more of the voting securities of any Person For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing

"**Affiliate Transaction**" shall have the meaning specified in Paragraph 6K

"**Asset Sale**" shall have the meaning specified in Paragraph 6H(iii)

"**Asset Sale Proceeds Notice**" shall have the meaning specified in Paragraph 6H(iv)

"**Asset Sale Proceeds Offer**" shall have the meaning specified in Paragraph 6H(iv)

"**Asset Sale Proceeds Payment Date**" shall have the meaning specified in Paragraph 6H

"**Attributable Indebtedness**" means, with respect to any Sale and Leaseback Transaction, as at the time of determination, the greater of (1) the fair market value of the property subject to such arrangement and (2) the present value of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale and Leaseback Transaction (including any period for which such lease has been extended) Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP

"**Bankruptcy Code**" shall mean Title 11 of the United States Code, entitled "Bankruptcy," as amended from time to time, or any successor statute

"**Board of Directors**" means, with respect to any Person, the Board of Directors, management committee, or reasonable equivalent thereof, as the case may be, of such Person or any committee of the Board of Directors, management committee, or reasonable equivalent thereof, as the case may be, of such Person duly authorized, with respect to any particular matter, to exercise the power of the Board of Directors, management committee, or reasonable equivalent thereof, as the case may be, of such Person

"**Board Resolution**" shall mean, with respect to any Person, a copy of a resolution certified by the secretary, an assistant secretary or authorized signatory of such Person to have been duly adopted by the Board of Directors of such Person and to be in full force and effect on the date of such certification, and delivered to the Noteholders

"**Business Day**" shall mean any day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York are required or authorized to be closed

"**Capital Expenditure**" means any amount paid or incurred in connection with the purchase of real estate, plant, machinery, equipment or the expenditures in connection with moving the manufacturing of a product from the former owner of the product to a contract manufacturer or other similar expenditure (including all renewals, improvements and replacements thereto, and all obligations under any lease of any of the foregoing) which would be required to be capitalized and shown on the consolidated balance sheet of the Company in accordance with GAAP

"**Capital Lease**" shall mean any lease of Property which in accordance with GAAP would be capitalized on the lessee's balance sheet

"**Capital Stock**" means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of corporate stock or membership interests, as the case may be, including each class of common stock and preferred stock of such Person

"**Capitalized Lease Obligations**" means with respect to any Person, Indebtedness represented by obligations under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP, and the amount of such Indebtedness shall be the capitalized amount of such obligations determined in accordance with GAAP

"**Cash Equivalents**" means

(1) marketable direct obligations issued by, or unconditionally guaranteed by, the United States Government or issued by any agency or instrumentality thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition thereof,

(2) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Moody's,

(3) commercial paper maturing no more than one year from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's,

(4) certificates of deposit or bankers' acceptances maturing within one year from the date of acquisition thereof issued by any bank organized under the laws of the United States of America or any state thereof or the District of Columbia or any U S branch of a foreign bank having at the date of acquisition thereof combined capital and surplus of not less than $500 0 million,

(5) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (1) above entered into with any bank meeting the qualifications specified in clause (4) above, and

(6) investments in money market funds which invest substantially all their assets in securities of the types described in clauses (1) through (5) above

"Cash Interest Expense" shall mean, for any Person for any period, interest expense for such period, determined on a consolidated basis in accordance with GAAP, excluding (a) interest paid in kind or by accretion or addition to principal, (b) amortization of commissions, discounts, fees, costs and other charges paid in connection with the incurrence of Indebtedness and (c) other interest costs not paid in cash

"**Catalog Business**" shall mean the As We Change® national mail order catalog and related business activities, as described in the Exchange Act Documents

A "**Change in Control**" shall be deemed to have occurred at such time as

(1) Edward F Calesa ceases to beneficially own, directly or indirectly, at least 4,500,000 shares of the Company's Common Stock,

(2) Edward F Calesa ceases to serve as the Chief Executive Officer of the Company,

(3) any Person or related group of Persons for purposes of Section 13(d) of the Exchange Act (other than Edward F Calesa) shall at any time be, directly or indirectly, the beneficial owner of 25% of the Voting Stock of the Company,

(4) there shall be consummated (A) any consolidation or merger of the Company in which the Company is not the continuing or surviving entity or pursuant to which the Capital Stock of the Company would be converted into cash, securities or other property, other than a merger or consolidation of the Company in which the holders of the Capital Stock of the Company outstanding immediately prior to the consolidation or merger hold, directly or indirectly, at least a majority of the voting power of the surviving entity's Capital Stock immediately after such consolidation or merger, or (B) any sale of 50% or more of the Company's assets,

(5) the Company or the Company's shareholders approve any plan or proposal for the liquidation or dissolution of the Company, or

(6) any person shall cause, as a result of any proxy solicitation made otherwise than by or on behalf of management, Continuing Directors to cease to be a majority of the Board of Directors of the Company (where "Continuing Directors" are (x) members of the original Board of Directors or (y) members appointed or whose nomination is approved by a majority of the Continuing Directors or nominated at a time that the Continuing Directors form a majority of the Board of Directors),

provided that if the Company maintains "key man" insurance on Edward F Calesa as provided for in Paragraph 5P hereof in an amount of at least $10,000,000 (the "Key Man Thresh-

old"), clauses (1), (2) and (3) above shall not be deemed a Change in Control if the events contemplated by such clauses are caused by the death of Mr Calesa, provided, further, that the Key Man Threshold shall be decreased proportionately as the aggregate principal amount of Notes outstanding decreases, but in no event shall the Key Man Threshold be less than $5,000,000

"**Change in Control Notice**" shall have the meaning specified in Paragraph 4D(b)

"**Change in Control Payment Date**" shall have the meaning specified in Paragraph 4D(a)

"**Closing**" **and** "**Date of Closing**" shall have the meaning specified in Paragraph 2

"**Collateral**" shall mean all the rights and interests related to Vaniqa acquired by the Company in connection with the Transaction

"**Consolidated Interest Expense**" means, with respect to any Person, for any period, the aggregate amount of interest which, in conformity with GAAP, would be set forth opposite the caption "interest expense" or any like caption on an income statement for such Person and its Subsidiaries on a consolidated basis (including, but not limited to

(1) imputed interest included in Capitalized Lease Obligations,

(2) all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing,

(3) the net costs associated with Interest Rate Agreements and other hedging obligations,

(4) amortization of debt issuance costs fees and expenses,

(5) the interest portion of any deferred payment obligation,

(6) amortization of discount or premium, if any, and

(7) all other non-cash interest expense (other than interest allocated to cost of sales)),

plus, without duplication, all net capitalized interest for such period and all interest incurred or paid under any guarantee of Indebtedness (including a guarantee of principal, interest or any combination thereof) of any Person, plus the amount of all dividends or distributions paid on

Disqualified Capital Stock (other than dividends paid or payable in shares of Capital Stock of the Company)

"**Consolidated Net Income**" means, with respect to any Person, for any period, the aggregate of the Net Income of such Person and its Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP, provided, however, that (a) (1) the equity of the Person in question in the Net Income of any other Person (the "other Person") in which the Person in question or any of its Subsidiaries has less than a 100% interest (which interest is not sufficient to cause the Net Income of such other Person to be consolidated into the Net Income of the Person in question in accordance with GAAP) for such period shall be included in such Person's Consolidated Net Income only to the extent of the amount of dividends or distributions actually paid to the Person in question or the Subsidiary (subject, in the case of a dividend or distribution to a Subsidiary, to the limitations contained in clause (b) of this definition of "Consolidated Net Income"), and (2) such Person's equity in a net loss of any such Person for such period shall be included in determining such Person's Consolidated Net Income, (b) the Net Income of any Subsidiary of the Person in question that is subject to any restriction or limitation on the payment of dividends or the making of other distributions shall be excluded to the extent of such restriction or limitation, except that (1) subject to the limitations contained in subclause (b)(2) of this definition of "Consolidated Net Income", the equity of such Person in the Net Income of any such Subsidiary for such period shall be included in such Person's Consolidated Net Income to the extent of dividends or distributions that could have been paid by such Subsidiary during such period to such Person or another Subsidiary (subject, in the case of a dividend or distribution to another Subsidiary, to the limitations contained in this clause), and (2) such Person's equity in a net loss of any such Subsidiary for such period shall be included in determining such Consolidated Net Income, (c) any net gain or loss resulting from an asset sale by the Person in question or any of its Subsidiaries other than in the ordinary course of business shall be excluded, (d) extraordinary gains and losses shall be excluded, (e) charges associated with any write-downs or write-offs of impaired assets or assets previously used in discontinued operations made in accordance with GAAP shall be excluded, (f) income or loss attributable to discontinued operations (including, without limitation, operations disposed of during such period whether or not such operations were classified as discontinued) shall be excluded, (g) charges associated with the early extinguishment of debt shall be excluded, and (h) in the case of a successor to the referent Person by consolidation or merger or as a transferee of the referent Person's assets, any earnings of the successor entity prior to such consolidation, merger or transfer of assets shall be excluded

"**Debt**" or "**Indebtedness**" means (without duplication), with respect to any Person, any indebtedness at any time outstanding, secured or unsecured, contingent or otherwise, which is for borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof), or evidenced by bonds, notes, de-

bentures or similar instruments or representing the balance deferred and unpaid of the purchase price of any property (excluding, without limitation, any balances that constitute subscriber advance payments and deposits, accounts payable or trade payables, and other accrued liabilities arising in the ordinary course of business) if and to the extent any of the foregoing indebtedness would appear as a liability upon a balance sheet of such Person prepared in accordance with GAAP, and shall also include, to the extent not otherwise included

(1) any Capitalized Lease Obligations of such Person,

(2) obligations secured by a Lien to which the property or assets owned or held by such Person are subject, whether or not the obligation or obligations secured thereby shall have been assumed,

(3) guarantees of Indebtedness of other Persons which would be included within this definition for such other Persons (whether or not such items would appear upon the balance sheet of the guarantor),

(4) all obligations (including contingent obligations) for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction,

(5) Disqualified Capital Stock of such Person or any Subsidiary thereof,

(6) Attributable Indebtedness with respect to any Sale and Leaseback Transaction, and

(7) obligations of any such Person under any currency agreement or any Interest Rate Agreement applicable to any of the foregoing (if and to the extent such currency agreement or Interest Rate Agreement obligations would appear as a liability upon a balance sheet of such Person prepared in accordance with GAAP)

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and, with respect to contingent obligations, the maximum liability upon the occurrence of the contingency giving rise to the obligation, provided that Indebtedness shall not include any liability for federal, state, local or other taxes Notwithstanding any other provision of the foregoing definition, any trade payable arising from the purchase of goods or materials or for services obtained in the ordinary course of business shall not be deemed to be Indebtedness of the Company or any of its Subsidiaries for purposes of this definition Furthermore, guarantees of (or obligations with respect to letters of credit supporting) Indebtedness otherwise included in the determination of such amount shall also not be included

"**Default**" shall mean any Event of Default and any default, event or condition which would, with the giving of any requisite notices and the passage of any requisite periods of time, constitute an Event of Default

"**Disqualified Capital Stock**" shall mean any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holders), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the sole option of the holder thereof, in whole or in part, on or prior to the final maturity date of the Notes for cash or securities constituting Debt

"**Documents**" shall mean this Agreement, the Notes, the Warrants, the Security Documents and the Registration Rights Agreement

"**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, together with all rules and regulations promulgated with respect thereto

"**ERISA Affiliate**" shall mean any Person which (a) is a member of the same controlled group (within the meaning of Section 414(b) of the IRC) of corporations as the Company, or (b) is under common control (within the meaning of Section 414(c) of the IRC) with the Company, or (c) is a member of an affiliated service group (within the meaning of Section 414(m) of the IRC) with the Company, or (d) is treated, pursuant to Section 414(o) of the IRC or the regulations promulgated thereunder, together with the Company as a single employer

"**Esclim**" shall mean the estrogen patch system for which the Company acquired rights to market, use, distribute and sell in the United States and Puerto Rico from Laboratoires Fournier S A , as described in the Exchange Act Documents

"**Event of Default**" has the meaning specified in Paragraph 7A

"**Excess Cash Flow**" shall mean, for any period of the Company, the difference of (a) Actual EBITDA for such period minus (b) the sum, without duplication, of (i) the amount of any cash income taxes payable by the Company and its Subsidiaries with respect to such period, (ii) scheduled cash interest paid (net of cash interest received) by the Company and its Subsidiaries during such period, (iii) Capital Expenditures made in cash by the Company and its Subsidiaries during such period, except to the extent financed with net insurance proceeds or net condemnation awards and (iv) scheduled permanent repayments of Indebtedness made by the Company and its Subsidiaries during such period

"**Excess Cash Flow Notice**" shall have the meaning specified in Paragraph 4E(c)

"**Excess Cash Flow Offer**" shall have the meaning specified in Paragraph 4E(a)

"**Excess Cash Flow Payment Date**" shall have the meaning specified in Paragraph 4E(b)

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended

"**Exchange Act Documents**" means the Company's Annual Report on Form 10-K for the Fiscal Year ended December 31, 2001 and its Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2002

"**Existing Secured Debt**" means any Indebtedness outstanding on the Date of Closing pursuant to the Securities Purchase Agreement dated June 29, 2001 between the Company and Elan Pharma International Limited and the Senior Secured Promissory Note dated November 15, 2001 issued by the Company to American Home Products Corporation

"**Fiscal Quarter**" means each quarterly accounting period of each Fiscal Year of the Company

"**Fiscal Year**" means each annual accounting period of the Company ending on December 31 of each calendar year

"**Fixed Charge Coverage Ratio**" means for any Person for any period, a fraction, the numerator of which is Actual EBITDA of such Person for such period plus the aggregate amount of rental expenses actually incurred by such Person and its Subsidiaries during such period, and the denominator of which is Fixed Charges for such period

"**Fixed Charges**" means for any Person for any period, the sum of (a) regularly scheduled mandatory principal payments on Indebtedness of such Person and its Subsidiaries for such period, excluding the regularly scheduled mandatory principal payment of $3 25 million due in November 2002 to American Home Products Corporation under the Existing Secured Debt held by American Home Products Corporation, (b) the aggregate amount of any optional prepayments of Indebtedness of such Person and its Subsidiaries made during such period, (c) the amount of taxes actually paid in cash by such Person or any Subsidiary during such period, (d) Cash Interest Expense for such period, (e) Capital Expenditures actually made by such Person and its Subsidiaries during such period and (f) rental expenses actually incurred by such Person and its Subsidiaries during such period, in each case determined on a consolidated basis in accordance with GAAP

"**GAAP**" shall mean United States generally accepted accounting principles as they may be amended as of the Date of Closing

"**Independent Financial Advisor**" means an independent investment banking firm of national standing

"**Interest Rate Agreement**" means, with respect to any Person, any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement designed to protect the party indicated therein against fluctuations in interest rates

"**Investment**" means, with respect of any Person, directly or indirectly, any advance, account receivable (other than an account receivable arising in the ordinary course of business of such Person), loan or capital contribution to (by means of transfers of property to others, payments for property or services for the account or use of others or otherwise), the purchase of any Capital Stock, bonds, notes, debentures, partnership or joint venture interests or other securities (other than the purchase of the Notes pursuant to Paragraph 4B, 4D, 4E or 6H and other than the purchase of Preferred Stock pursuant to Sections 9E, 9F and 9H of the certificate of designations relating thereto) of, the acquisition, by purchase or otherwise, of all or substantially all of the business or assets or stock or other evidence of beneficial ownership of, or any division, line of business or product of, any Person or the making of any investment in any Person Investments shall exclude (a) extensions of trade credit on commercially reasonable terms in accordance with normal trade practices of such Person and (b) the repurchase of securities of any Person by such Person For the purposes of Paragraph 6I, the amount of any Investment shall be the original cost of such Investment plus the cost of all additional Investments by the Company or any of its Subsidiaries, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment, reduced by the payment of cash distributions which constitute a return of capital in connection with such Investment, provided that the aggregate of all such reductions shall not exceed the amount of such initial Investment plus the cost of all additional Investments, provided, further, that no such payment of distributions or receipt of any such other amounts shall reduce the amount of any Investment if such payment of distributions or receipt of any such amounts would be included in Consolidated Net Income If the Company or any Subsidiary of the Company sells or otherwise disposes of any common stock of any direct or indirect Subsidiary of the Company such that, after giving effect to any such sale or disposition, the Company no longer owns, directly or indirectly, greater than 50% of the outstanding common stock of such Subsidiary, the Company shall be deemed to have made an Investment on the date of any such sale or disposition equal to the fair market value of the common stock of such Subsidiary not sold or disposed of

"**IRC**" shall mean the Internal Revenue Code of 1986, as amended

"**IRS**" shall mean the Internal Revenue Service

"**Lien**" shall mean, as to any Person, any mortgage, lien, pledge, adverse claim, charge, security interest or other encumbrance in or on, or interest of title of any vendor, lessor, lender or other secured party to or of the Person under a conditional sale or other title retention agreement or Capital Lease with respect to, any Property or asset of such Person, or the signing or filing of a financing statement which names such Person as debtor, or the signing of any security agreement authorizing any other party as the secured party thereunder to file any financing statement

"**Material Adverse Effect**" shall mean, with respect to the Company and its Subsidiaries, a material adverse effect on (a) the business, condition (financial or otherwise), properties, results of operations or prospects of the Company and its Subsidiaries, taken as a whole, or (b) the validity or enforceability of, or the ability of the Company to perform its obligations under, this Agreement or any of the other Documents, or the rights or remedies of a Purchaser or the Collateral Agent hereunder or thereunder

"**Material Agreements**" shall mean Documents, the Transaction Documents, the governing instruments of the Company and its Subsidiaries and all agreements relating to its investment in or relationship with its Subsidiaries

"**Moody's**" means Moody's Investors Service, Inc or any successor to the rating agency business thereof

"**Multiemployer Plan**" shall mean a multiemployer plan as defined in Section 3(37) or Section 4001(a)(3) of ERISA or Section 414(f) of the IRC to which the Company or any of its ERISA Affiliates is or has been making, or is or has been obligated to make, contributions or as to which the Company or any of its ERISA Affiliates may have liability

"**Net Income**" means, with respect to any Person, for any period, the net income (loss) available to common stockholders of such Person determined in accordance with GAAP

"**Net Proceeds**" means

(i) in the case of any incurrence of a loan or sale of debt securities or Capital Stock or other equity securities of any Person, the aggregate net proceeds received by such Person, after payment of expenses, commissions and the like incurred in connection therewith, whether such proceeds are in cash or in property (valued at the fair market value thereof, as determined in good faith by the Board of Directors of such Person, at the time of receipt), and

(ii) in the case of any asset sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any asset sale), net of the direct costs relating to such asset sale, including, without limitation, legal, accounting and investment banking fees, sales commissions, and any relocation expenses incurred as a result thereof, and taxes paid or payable as a result thereof, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements, and any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with GAAP

"**Net Worth**" means, with respect to any Person, at any time, the consolidated stockholders' equity of such Person at such time, determined in accordance with GAAP, except that there shall be deducted any amount of treasury stock reflected as an asset at such time

"**Noteholder**" shall mean the holder of any Note

"**Notes**" shall have the meaning specified in Paragraph 1

"**PBGC**" means the Pension Benefit Guaranty Corporation or any successor thereof

"**Pension Plan**" means any "employee pension benefit plan" within the meaning of Section 3(2) of ERISA

"**Permitted Acquisition**" means an acquisition by the Company of either (a) rights to (i) pharmaceutical products or (ii) similar products sold into the OB/GYN, dermatological or dental markets or (b) assets of a business reasonably similar to the business of the Company and its Subsidiaries on the Date of Closing, in the case of either clause (a) or (b) to the extent the Company demonstrates to the reasonable satisfaction of the holders of the Notes that (A) such acquisition is accretive to the earnings of the Company for the first 12 calendar month period beginning after the closing date and (B) that, after giving effect to such acquisition, the Company and its Subsidiaries remain in compliance with the terms of this Agreement and the Notes, including all covenants

"**Permitted Asset Sale**" means any asset sale permitted by paragraph 6H hereof

"**Permitted Debt**" means (i) the Notes, (ii) Debt existing and outstanding on the Date of Closing, (iii) a Permitted Working Capital Facility, (iv) the incurrence by the Company or any of its Subsidiaries of intercompany Indebtedness between or among the Company and any of its Subsidiaries, (v) the accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of addi-

tional Indebtedness with the same terms (including any Additional Notes), and the payment of dividends on Disqualified Stock in the form of additional shares of the same class of Disqualified Stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock for purposes of the definition thereof, provided in each such case, that the amount thereof is included in Fixed Charges of the Company as accrued, (vi) Indebtedness issued to or borrowed from Elan Pharma International or an Affiliate thereof by the Company in consideration of the elimination of the royalty provisions of the Midrin Asset and Inventory Purchase Agreement dated as of June 29, 2001 by and among the Company, Elan Pharma International Limited and Elan Pharmaceuticals, Inc in an aggregate principal amount not to exceed $1 5 million, so long as the Company fulfills its obligations under that certain letter agreement dated the date hereof between the Company and the Purchasers, and (vii) the incurrence by the Company or any of its Subsidiaries of additional Indebtedness in an aggregate principal amount (or accreted value, as applicable) at any one time outstanding not to exceed $500,000

"**Permitted Investments**" means Investments made on or after the Date of Closing consisting of

(a) Investments in cash and Cash Equivalents,

(b) any Investment in a wholly-owned Subsidiary,

(c) an Investment that is made by the Company or a Subsidiary thereof in the form of any Capital Stock, bonds, notes, debentures, partnership or joint venture interests or other securities that are issued by a third party to the Company or such Subsidiary solely as partial consideration for the consummation of a Permitted Asset Sale,

(d) any Permitted Acquisition (i) solely in exchange for the issuance of Capital Stock (other than Disqualified Capital Stock) of the Company or (ii) for cash if after giving effect to the transaction the Company will have a minimum cash balance of $14,000,000,

(e) Capital Stock, obligations or securities received in settlement of debts created in the ordinary course of business and owing to the Company or any Subsidiary or in satisfaction of judgments,

(f) any Investment existing on the Date of Closing,

(g) any Investment by the Company or any of its Subsidiaries in a Person, if as a result of such Investment (i) such Person becomes a Subsidiary of the Company or (ii) such Person is merged, consolidated or amalgamated with or into, or trans-

fers or conveys substantially all of its assets to, or is liquidated into, the Company or a Subsidiary of the Company, and

(h) other Investments in any Person having an aggregate fair market value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (i), not to exceed $500,000

"**Permitted Working Capital Facility**" means a revolving credit facility of the Company secured by inventory and receivables of the Company with an aggregate amount of Indebtedness permitted thereunder not to exceed $5,000,000 at any one time outstanding, including any amendment, extension or refinancing thereof secured by the same assets and not in excess of the same amount

"**Person**" shall mean and include an individual, corporation, partnership, trust or trustee thereof, estate or executor thereof, unincorporated organization or joint venture, court or governmental unit or any agency or subdivision thereof, or any other legally recognizable entity

"**Preferred Stock**" means the Senior Convertible Redeemable Preferred Stock, Series A of the Company to be issued on the Date of Closing as part of the financing of the Vaniqa Acquisition

"**Projections**" shall mean the financial projections concerning the Company delivered to the Purchasers by the Company pursuant to Paragraph 3A(xii)

"**Property**" shall mean any kind of property or asset, whether real, personal or mixed, or tangible or intangible

"**Purchase Money Indebtedness**" means any Indebtedness incurred in the ordinary course of business by a Person to finance the cost (including the cost of construction) of an item of property, the principal amount of which Indebtedness does not exceed the sum of (1) 100% of such cost and (2) reasonable fees and expenses of such Person incurred in connection therewith

"**Purchasers**" shall have the meaning set forth in the introductory paragraph of this Agreement and shall include its successors and assigns

"**Qualified Capital Stock**" shall mean any Capital Stock that is not Disqualified Capital Stock

"**Registration Rights Agreement**" shall mean the Registration Rights Agreement relating to the Warrants dated as of the date hereof by and between the Company and the Purchasers

"**Required Holders**" shall mean the holders of at least 66 2/3% of the aggregate principal amount of the Notes from time to time outstanding

"**Restricted Payment**" shall have the meaning specified in Paragraph 6I

"**Restricted Security**" shall mean any Note or Warrant upon original issuance thereof, and at all times subsequent thereto until, in the case of any such Note or Warrant, (A) it has been effectively registered under the Securities Act and disposed of in accordance with the registration statement covering it, or (B) it is sold pursuant to Rule 144 or becomes eligible for resale under Rule 144(k)

"**S&P**" means Standard & Poor's Ratings Service, a division of McGraw-Hill Companies, Inc or any successor to the rating agency business thereof

"**Sale and Leaseback Transaction**" means any arrangement with any Person providing for the leasing by the Company or any Subsidiary of the Company of any real or tangible personal property, which property has been or is to be sold or transferred by the Company or such Subsidiary to such Person in contemplation of such leasing

"**Securities Act**" shall mean the Securities Act of 1933, as amended

"**Securities and Exchange Commission**" shall mean the Securities and Exchange Commission of the United States

"**Security Documents**" means the Security Agreement and the Intercreditor Agreement in substantially the form as set forth as Exhibits C-1 and C-2 hereto

"**Subsidiary**" shall mean any corporation or other entity of which a Person owns, directly or indirectly, that number of shares of Voting Stock which has the power to elect a majority of the Board of Directors or other governing body

"**Taxes**" shall mean all taxes, assessments, fees and other charges including, without limitation, withholding taxes, penalties, and interest

"**Termination Event**" shall mean (a) a "reportable event" (within the meaning of Section 4043(b) of ERISA) with respect to a Pension Plan (other than a "reportable event" as to which the PBGC has by regulation waived the thirty (30) day notice requirement under Section 4043(a) of ERISA), provided, however, that a failure to meet the minimum funding

standards of Section 412 of the IRC shall be a Termination Event regardless of the issuance of any waiver under Section 412(d) of the IRC, (b) the withdrawal of the Company, any of its Subsidiaries or any ERISA Affiliate from a Pension Plan during a plan year in which it was a "substantial employer" (within the meaning of Section 4001(a)(2) of ERISA), (c) the complete or partial withdrawal of the Company, any of its Subsidiaries or any ERISA Affiliate from a Multiemployer Plan under Section 4201 or 4204 of ERISA, (d) the receipt by the Company, any of its Subsidiaries or any ERISA Affiliate of notice from a Multiemployer Plan that is in reorganization or insolvent under Section 4241 or 4245 of ERISA or that it intends to terminate or has terminated under Section 4041A of ERISA, (e) the providing of a notice of intent to terminate a Pension Plan pursuant to Section 4041(a)(2) of ERISA or the treatment of a Pension Plan amendment as a termination under Section 4041(e) of ERISA, (f) the institution of proceedings by the PBGC to terminate a Pension Plan or the appointment of a trustee to administer any Pension Plan under Section 4042 of ERISA, (g) the receipt by the Company, any of its Subsidiaries or any ERISA Affiliate of a notice from any Multiemployer Plan that any action described in clause (f) has been taken with respect to that Multiemployer Plan, or (h) any other event or condition which might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan

"**Total Indebtedness**" means, of any Person, as of the date of determination, all Indebtedness of such Person which, in accordance with GAAP, would be included as indebtedness on a consolidated balance sheet of such Person at such date For the avoidance of doubt, the Preferred Stock shall not be considered part of Total Indebtedness

"**Transaction**" shall mean the Vaniqa Acquisition and the financing thereof

"**Transaction Documents**" shall mean each agreement entered into in connection with the Transaction

"**Transferee**" shall mean any direct or indirect transferee of all or any part of any Note or Warrant purchased under this Agreement

"**UCC**" means the Uniform Commercial Code as in effect in any applicable jurisdiction

"**Vaniqa**" shall mean VANIQA® (eflornithine hydrochloride) Cream, 13 9%

"**Vaniqa Acquisition**" shall mean the acquisition by the Company of Vaniqa and related assets from Westwood-Squibb Colton Holdings Partnership, the Gillette Company and Bristol-Myers Squibb Company, for approximately $38 3 million

"**Voting Stock**" shall mean, with respect to any corporation or other Person, as the case may be, any shares of Capital Stock of any class or classes of such corporation or

other Person, as the case may be, whose holders are entitled under ordinary circumstances to vote for the election of directors of such corporation or other Person, as the case may be, or persons performing similar functions (irrespective of whether or not at the time Capital Stock of the class or any other class or classes shall have or might have special voting power or rights by reason of the happening of any contingency)

Unless otherwise specified or the context otherwise requires, all phrases used herein that have a specific meaning under GAAP shall have their meaning under GAAP

PARAGRAPH 11. MISCELLANEOUS

11A. Note Payments. So long as each Purchaser shall hold any Note, the Company will make payments of principal of and interest on such Note which comply with the terms of this Agreement, by wire transfer of immediately available funds for credit (not later than 1 00 p m , New York time, on the date due) to the account or accounts as specified in the signature pages hereto, or such other account or accounts in the United States as such Purchaser may designate in writing, notwithstanding any contrary provision herein or in any Note with respect to the place of payment Each Purchaser agrees that, before disposing of any Note, such Purchaser will make a notation thereon (or on a schedule attached thereto) of all principal payments previously made thereon, if any, and of the date to which interest thereon has been paid The Company agrees to afford the benefits of this Paragraph 11A to any Transferee which shall have made the same agreement as each Purchaser has made in this Paragraph 11A

11B. Expenses. The Company agrees, whether or not the transactions contemplated hereby shall be consummated, to pay, and save each Purchaser and any Transferee harmless against liability for the payment of, all reasonable out-of-pocket expenses arising in connection with such transactions, including (i) all fees and expenses of the Purchasers' counsel in connection with this Agreement and the transactions contemplated hereby, (ii) all document production and duplication charges and the reasonable fees and expenses of any counsel engaged by such Purchaser or such Transferee in connection with any subsequent proposed modification of, or proposed consent under, this Agreement, whether or not such proposed modification shall be effected or proposed consent granted, and (iii) the costs and expenses, including reasonable attorneys' fees, incurred by such Purchaser or such Transferee in enforcing (or determining whether or how to enforce) any rights under this Agreement, the Notes or the Warrants or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement or the transactions contemplated hereby or by reason of such Purchaser's or such Transferee's having acquired any Note or Warrant, including without limitation costs and expenses incurred in any bankruptcy case The obligations of the Company under this Paragraph 11B shall survive the transfer of any

Note or Warrant or portion thereof or interest therein by each Purchaser or any Transferee and the payment of any Note or the exercise of any Warrant

11C Consent to Amendments. This Agreement may be amended, and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by them, if the Company shall obtain the written consent to such amendment, action or omission to act, of the Required Holders except that, without the written consent of each holder, no amendment to this Agreement shall

(a) reduce the amount of Notes whose holders must consent to an amendment, supplement or waiver to this Agreement or the Notes,

(b) reduce the rate of or change the time for payment of interest, including defaulted interest, on any Note,

(c) reduce the principal of or premium on or change the stated maturity of any Note or change the date on which any Notes may be subject to redemption or repurchase or reduce the redemption or repurchase price thereof,

(d) make any Note payable in money other than that stated in the Note or change the place of payment from New York, New York,

(e) waive a default on the payment of the principal of, interest on, or redemption payment with respect to any Note,

(f) make any change in the provisions of this Agreement or the Notes protecting the right of each holder of Notes to receive payment of the principal of and interest on such Note on or after the due date thereof or to bring suit to enforce such payment, or permitting holders of a majority in principal amount at maturity of Notes to waive Defaults or Events of Default,

(g) amend, change or modify in any material respect the obligation of the Company to purchase all or a portion of the Notes upon an Asset Sale or with Excess Cash Flow or redeem the Notes in accordance with Paragraphs 4B, 4D, 4E and Paragraph 6H in the event of an issuance of Capital Stock or asset sale that has been consummated or modify any provisions or definitions with respect thereto, or

(h) modify or change any provision of this Agreement or the related definitions affecting the ranking of the Notes in a manner which adversely affects the holders of Notes

Subject to Paragraph 6O, each holder of any Note at the time or thereafter outstanding shall be bound by any consent authorized by this Paragraph 11C, whether or not such Note shall have been marked to indicate such consent, but any Notes issued thereafter may bear a notation referring to any such consent No course of dealing between the Company and the holder of any Note nor any delay in exercising any rights hereunder or under any Note shall operate as a waiver of any rights of any holder of such Note As used herein and in the Notes, the term "this Agreement" and references thereto shall mean this Agreement as it may from time to time be amended or supplemented

11D. Form, Registration, Transfer and Exchange of Notes; Lost Notes. The Notes are issuable as registered Notes without coupons in denominations of at least $1,000, except as may be necessary to reflect any principal amount not evenly divisible by $1,000 The Company shall keep at its principal office a register in which the Company shall provide for the registration of Notes and of transfers of Notes Upon surrender for registration of transfer of any Note at the principal office of the Company, the Company shall, at its expense, execute and deliver one or more new Notes of the like tenor and of a like aggregate principal amount or number, registered in the name of such transferee or transferees, provided that in no event will the Company be required to register for transfer or execute and deliver new Notes in connection with any transfer of less than $2,000,000 aggregate principal amount of the Notes unless the transferee thereof is a registered holder of Notes at the time of such transfer or the amount to be transferred represents the entire principal amount of Notes registered in the name of the transferor At the option of the holder of any Note, such Note may be exchanged for other Notes of like tenor and of any authorized denominations, of a like aggregate principal amount or number, upon surrender of the Note to be exchanged at the principal office of the Company Whenever any Notes are so surrendered for exchange, the Company shall, at its expense, execute and deliver the Notes which the holder making the exchange is entitled to receive Every Note surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer duly executed by the holder of such Note or such holder's attorney duly authorized in writing Any Note or Notes issued in exchange for any Note or upon transfer thereof shall carry the rights to unpaid interest and interest to accrue which were carried by the Note so exchanged or transferred, so that neither gain nor loss of interest shall result from any such transfer or exchange Upon receipt of written notice from the holder of any Note of the loss, theft, destruction or mutilation of such Note and, in the case of any such loss, theft or destruction, upon receipt of such holder's unsecured indemnity agreement, or in the case of any such mutilation upon surrender and cancellation of such Note, the Company will make and deliver a new Note, of like tenor, in lieu of the lost, stolen, destroyed or mutilated Note

11E Persons Deemed Owners; Participations. Prior to due presentment for registration of transfer, the Company may treat the Person in whose name any Note is registered as the owner and holder of such Note for the purpose of receiving payment of principal

of, interest on such Note and for all other purposes whatsoever, whether or not such Note shall be overdue, and the Company shall not be affected by notice to the contrary

11F. Survival of Representations and Warranties, Entire Agreement. All representations and warranties contained herein or made in writing by or on behalf of the Company or any Purchaser in connection herewith shall survive the execution and delivery of this Agreement, the Notes and the Warrants and the transfer by any Purchaser of any Note or Warrant or portion thereof or interest therein, and may be relied upon by any Transferee, regardless of any investigation made at any time by or on behalf of any Purchaser or any Transferee Subject to the preceding sentence, this Agreement and the other Documents embody the entire agreement and understanding between the Purchasers and the Company and supersede all prior agreements and understandings relating to the subject matter hereof

11G Successors and Assigns. All covenants and other agreements in this Agreement contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto (including, without limitation, any Transferee) whether so expressed or not

11H Disclosure to Other Persons The Company acknowledges that the holder of any Note may deliver copies of any financial statements and other documents delivered to such holder, and disclose any other information disclosed to such holder, by or on behalf of the Company or any of its Subsidiaries in connection with or pursuant to this Agreement to (i) such holder's directors, officers, employees, agents and professional consultants, (ii) any other holder of any Note, (iii) any Person to which such holder offers to sell such Note or any part thereof, (iv) any Person from which such holder offers to purchase any security of the Company, (v) any federal or state regulatory authority having jurisdiction over such holder or proposed purchase of a Note or interest therein, (vi) the National Association of Insurance Commissioners or any similar organization or (vii) any other Person to which such delivery or disclosure may be necessary or appropriate (a) in compliance with any law, rule, regulation or order applicable to such holder, (b) in response to any subpoena or other legal process or informal investigative demand or (c) in connection with any litigation to which such holder is a party, provided that, in respect of (i) through (vii), there shall be no violation of applicable securities laws and, in respect of (i), (iii), (iv) and (vii)(c), the Person to whom such information is disclosed shall be apprised of the confidential nature of such information and shall agree with the Company to keep such information confidential

11I Notices. All notices or other communications provided for hereunder shall be in writing and sent by first class mail or overnight delivery service (with charges prepaid) and (i) if to a Purchaser, addressed to such Purchaser at the address specified for such communications on the signature pages hereof, or at such other address as such Purchaser shall have specified to the Company in writing, (ii) if to any other holder of any Note or War-

rant, addressed to such other holder at such address as such other holder shall have specified to the Company in writing or, if any such other holder shall not have so specified an address to the Company, then addressed to such other holder in care of the last holder of such Note which shall have so specified an address to the Company and (iii) if to the Company, addressed to it at 12220 El Camino Real, Suite 400, San Diego, CA 92130, Attention Chief Financial Officer, or at such other address as the Company shall have specified to the holder of each Note and Warrant

11J. Payments Due on Non-Business Days. Anything in this Agreement or the Notes to the contrary notwithstanding, any payment of principal of or interest on any Note that is due on a date other than a Business Day shall be made on the next succeeding Business Day If the date for any payment is extended to the next succeeding Business Day by reason of the preceding sentence, the period of such extension shall be included in the computation of the interest payable on such Business Day

11K. Satisfaction Requirement If any agreement, certificate or other writing, or any action taken or to be taken, is by the terms of this Agreement required to be satisfactory to the Required Holders, the determination of such satisfaction shall be made by the Required Holders in the sole and exclusive judgment (exercised in good faith) of the Person or Persons making such determination

11L. Governing Law THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE PARTIES SHALL BE GOVERNED BY, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS. This Agreement may be changed only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought

11M. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction

11N Descriptive Headings The descriptive headings of the several paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement

11O Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument

If you are in agreement with the foregoing, please sign the form of acceptance below or on the enclosed counterpart of this letter and return the same to the Company, whereupon this letter shall become a binding agreement between the Company and you

Very truly yours,

WOMEN FIRST HEALTHCARE, INC

By _____

Name
Title

SIGNATURE PAGE TO PURCHASE AGREEMENT

Accepted and Agreed as of the
date first above written:

CIBC WMC INC.

By: _____
Name: TODD WORSLEY

Title: MANAGING DIRECTOR

Accepted and Agreed as of the
date first above written.

WHITNEY PRIVATE DEBT FUND

By: Whitney Private Debt GP, LLC
its General Partner

By: _____
Name: Kevin J. Curley
Title: Attorney-in-Fact

J.H. WHITNEY MEZZANINE FUND, L.P

By: Whitney GP, L.L.C.
its General Partner

By: _____
Name: Kevin J Curley
Title: Attorney-in-Fact

Exhibit A
to Note and Warrant
Purchase Agreement

[FORM OF SENIOR SECURED NOTE]

THE NOTE (OR ITS PREDECESSOR) EVIDENCED HEREBY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "ACT"), AND THE NOTE EVIDENCED HEREBY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE NOTE EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION PROVIDED BY RULE 144A UNDER THE ACT THE HOLDER OF THE NOTE EVIDENCED HEREBY AGREES FOR THE BENEFIT OF THE ISSUER THAT (A) SUCH NOTE MAY BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (1)(a) TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE ACT IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, OR IN ACCORDANCE WITH RULE 144 UNDER THE ACT, OR PURSUANT TO ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE ACT (AND BASED UPON AN OPINION OF COUNSEL), (b) TO THE ISSUER OR ANY OF ITS SUBSIDIARIES, (c) OUTSIDE THE UNITED STATES IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 904 UNDER THE ACT OR (d) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT AND (2) IN EACH CASE, IN ACCORDANCE WITH THE APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THE NOTE EVIDENCED HEREBY OF THE RESALE RESTRICTIONS SET FORTH IN (A) ABOVE

WOMEN FIRST HEALTHCARE, INC
SENIOR SECURED NOTE
DUE SEPTEMBER 30, 2005

No __ June 25, 2002
$[ ]

FOR VALUE RECEIVED, the undersigned, WOMEN FIRST HEALTHCARE, INC (the "Company"), a corporation organized and existing under the laws of the State of Delaware, hereby promises to pay to [ ], or its registered assigns, the principal sum of [ ] on September 30, 2005, with interest (computed on the basis of a 360-day year of twelve months) on the unpaid balance hereof at the initial rate of 11 0% per annum, payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year (an "Interest Payment Date"), commencing on [ ], 2002, to the registered holder of this Note on the fifteenth day preceding each Interest Payment Date, until the principal hereof shall have become due and payable Payments of principal and interest hereon shall be made in lawful money of the United States of America by the method and at the address for such purpose specified in the Securities Purchase Agreement (as defined below) To the extent any of the Notes remain outstanding after 18 months after the first issuance of the Notes, the per annum interest rate shall increase on the basis of the following schedule

Months after Date of Closing	Interest rate shall be
18-24 months	12 5%
24-42 months	13 0%

The interest rate for any period during which the Notes are outstanding will be determined on the first day of the period during which such rate shall apply, i e on the Date of Closing and on each Interest Payment Date thereafter If the Company shall default in the payment of the principal of or interest on any Note or any other amount becoming due hereunder or thereunder, by acceleration or otherwise, the Company shall on demand from time to time pay interest, to the extent permitted by law, on such defaulted amount to but excluding the date of actual payment (after as well as before judgment) at the rate otherwise applicable to such Note plus 2 00% per annum

Payments of principal of and interest on this Note are to be made pursuant to the terms of the Note and Warrant Purchase Agreement, in lawful money of the United States of America (or Additional Notes with respect to payments of interest only)

This Note is one of a series of Senior Secured Notes (the "Notes") issued pursuant to that certain Note and Warrant Purchase Agreement, dated as of June 25, 2002, be-

tween the Company and the Purchasers (the "Securities Purchase Agreement") Certain capitalized terms used herein have the meanings specified in the Securities Purchase Agreement The holder of this Note is entitled to the applicable benefits of the Securities Purchase Agreement and may enforce such agreements and exercise the remedies provided for thereby or otherwise available in respect thereof, all in accordance with and subject to the terms thereof

This Note is a registered Note and, as provided in the Securities Purchase Agreement, upon surrender of this Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee Prior to due presentment for registration of transfer, the Company may treat the person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Company shall not be affected by any notice to the contrary

The Company's obligations under this Note are secured by a Lien in favor of the Collateral Agent for the benefit of the Noteholders

This Note is subject to optional and mandatory redemption, in whole or from time to time in part, during the periods and on the terms specified in the Securities Purchase Agreement

If an Event of Default shall occur and be continuing, the principal of this Note may be declared or otherwise become due and payable in the manner and with the effect provided in the Securities Purchase Agreement

Should any indebtedness represented by this Note be collected at law or in equity, or in bankruptcy or other proceedings, or should this Note be placed in the hands of attorneys for collection, the Company agrees to pay, in addition to the principal, premium, if any, and interest due and payable hereon, all costs of collecting or attempting to collect this Note, including reasonable attorneys' fees and expenses (including those incurred in connection with any appeal)

This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without regard to the principles of conflicts of law

WOMEN FIRST HEALTHCARE, INC

By _____

Name
Title

Aggregate principal amount of Senior Secured Notes Due 2005 to be purchased by you on request of the Company

$_____

Number of Common Stock Purchase Warrants to be purchased by you on request of the Company _____

Address of Purchaser

[ ]

Designated Bank _____

ABA Number _____

Address _____

_____

_____

Account No _____

Attention _____

Taxpayer I D Number _____
(if registered in the name of a
nominee, the nominee Taxpayer
I D Number)

Nominee (name in which Notes are to be registered, if different than name of Purchaser)

_____

RECYCLED

EXECUTION COPY

SECURITY AGREEMENT

By

WOMEN FIRST HEALTHCARE, INC ,
as Company

and

CIBC WMC INC ,
as Collateral Agent

Dated as of June 25, 2002

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SECURITY AGREEMENT

SECURITY AGREEMENT (the "Agreement"), dated as of June 25, 2002, made by WOMEN FIRST HEALTHCARE, INC., a Delaware corporation having an office at 12220 El Camino Real, Suite 400, San Diego, California 92130 (the "Company"), in favor of CIBC WMC INC , having an office at C/O CIBC Capital Partners, 425 Lexington Avenue, New York, New York 10017, in its capacity as Collateral Agent pursuant to the Securities Purchase Agreement and Preferred Stock Purchase Agreement (each as hereinafter defined), as pledgee, assignee and secured party (in such capacities and together with any successors in such capacities, the "Collateral Agent")

RECITALS

A The Company and the Purchasers (as defined in the Securities Purchase Agreement) have, in connection with the execution and delivery of this Agreement, entered into the Note and Warrant Purchase Agreement, dated as of June 25, 2002 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Securities Purchase Agreement"), pursuant to which the Company has issued its senior secured notes due 2005 (the "Notes") in the aggregate principal amount of $28 0 million, together with warrants to purchase common stock It is contemplated that the Company may, after the date hereof, issue Additional Notes (as defined in the Securities Purchase Agreement, the Additional Notes, together with the Notes, the "Securities") pursuant to the provisions of the Securities Purchase Agreement

B The Company and the Purchasers (as defined in the Preferred Stock Purchase Agreement) have, in connection with the execution and delivery of this Agreement, entered into the Preferred Stock Purchase Agreement, dated as of June 25, 2002 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Preferred Stock Purchase Agreement" and, together with the Securities Purchase Agreement, the "Purchase Agreements"), pursuant to which the Company has issued convertible redeemable preferred stock (the "Convertible Preferred Stock") in the aggregate liquidation preference of $13 0 million It is contemplated that the Company may, after the date hereof, issue Additional Preferred Stock (as defined in the Preferred Stock Purchase Agreement, the Additional Preferred Stock, together with the Convertible Preferred Stock, the "Preferred Stock") pursuant to the provisions of the Certificate of Designation relating to the Preferred Stock (the "Certificate of Designation")

C The Company will receive substantial benefits from the execution, delivery and performance of the obligations under the Purchase Agreements and is, therefore, willing to enter into this Agreement

D The Company is or, as to Pledged Collateral (as hereinafter defined) acquired by such Company after the date hereof will be, the legal and/or beneficial owner of the Pledged Collateral pledged by it hereunder

E This Agreement is given by the Company in favor of the Collateral Agent for the benefit of the Secured Parties (as hereinafter defined) to secure the payment and performance of all of the Secured Obligations (as hereinafter defined)

AGREEMENT

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and the Collateral Agent hereby agree as follows

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1 1 Definitions

(a) Unless otherwise defined herein, terms used herein that are defined in the UCC shall have the meanings assigned to them in the UCC, including the following terms which are capitalized herein

"Accounts", "Bank", "Chattel Paper", "Commercial Tort Claim", "Deposit Accounts", "Documents", "Electronic Chattel Paper", "Equipment", "Fixtures", "Instruments" (as defined in Article 9 rather than Article 3), "Inventory", "Proceeds", "Security Entitlement", and "Tangible Chattel Paper"

(b) Capitalized terms used but not otherwise defined herein that are defined in the Purchase Agreements shall have the meanings given to them in the Purchase Agreements, including the following terms

"Affiliate", "Business Day", "Capitalized Lease Obligations", "Cash Equivalents", "Date of Closing", "Debt", "Event of Default", "GAAP", "Indebtedness", "Lien", "Person", and "Purchase Money Indebtedness"

(c) The following terms shall have the following meanings

"Acquisition Document Rights" shall mean, with respect to the Company, collectively, all of the Company's rights, title and interest in, to and under the Acquisition Documents including, without limitation, (i) all rights and remedies relating to monetary damages, including indemnification rights and remedies, and claims for damages or other relief pursuant to or in respect of the Acquisition Documents, (ii) all rights and remedies relating to monetary damages, including indemnification rights and remedies, and claims for monetary damages under or in respect of the agreements, documents and instruments referred to in the Acquisition Documents or related thereto and (iii) all proceeds, collections, recoveries and rights of subrogation with respect to the foregoing

"Acquisition Documents" shall mean, collectively, (i) that certain Asset Purchase Agreement dated June 25, 2002, among the Company, Westwood-Squibb Colton Holdings Partnership, the Gillette Company and Bristol-Myers Squibb Company (the "Asset Purchase Agreement"), (ii) that certain Supply Agreement dated June 25, 2002, among the Company, Westwood-Squibb Colton Holdings Partnership, the Gillette Company and Bristol-Myers Squibb Company, and (iii) that certain License Agreement dated June 25, 2002, among the Company, Westwood-Squibb Colton Holdings Partnership, the Gillette Company and Bristol-Myers Squibb Company, in each case, together with any and all documents, agreements and other instruments then or at any time thereafter executed and/or delivered in con-

nection therewith or related thereto in each case as amended, amended and restated, supplemented extended, renewed, replaced or otherwise modified from time to time

"Agreement" shall mean this Agreement, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof

"Asset Purchase Agreement" shall have the meaning assigned to such term in the definition of Acquisition Documents hereof

"Business" shall mean the treatment of unwanted facial hair in women through the sale of the Product

"Certificate of Designation" shall have the meaning assigned to such term in Recital B hereof

"Charges" shall mean any and all property and other taxes, assessments and special assessments, levies, fees and all governmental charges imposed upon or assessed against, and all claims (including, without limitation, landlords , carriers', mechanics', workmen's, repairmen s, laborers', materialmen's, suppliers' and warehousemen's Liens and other claims arising by operation of law) against, all or any portion of the Pledged Collateral

"Collateral" shall mean all the rights and interests related to the Product acquired by the Company in connection with the acquisition by the Company of the Product and related assets pursuant to the Asset Purchase Agreement and the financing thereof

"Collateral Account Funds" shall mean, collectively, the following from time to time on deposit in a collateral account all funds (including, without limitation, all Trust Monies), investments (including, without limitation, all Cash Equivalents) and all certificates and instruments from time to time representing or evidencing such investments, all notes, certificates of deposit, checks and other instruments from time to time hereafter delivered to or otherwise possessed by the Collateral Agent for or on behalf of the Company in substitution for, or in addition to, any or all of the Pledged Collateral, and all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the items constituting Pledged Collateral

"Collateral Agent" shall have the meaning assigned to such term in the Preamble of this Agreement

"Collateral Material Adverse Effect" shall mean, as of any date of determination and whether individually or in the aggregate (a) any event, circumstance, occurrence or condition which has caused or resulted in (or would reasonably be expected to cause or result in) a material adverse effect on the business or operations as presently conducted in connection with the Pledged Collateral, (b) any event, circumstance, occurrence or condition which has caused or resulted in (or would reasonably be expected to cause or result in) a material adverse effect on the value or utility of the Pledged Collateral, or (c) subject to Section 2 2 of this Agreement, any event, circumstance, occurrence or condition which has caused or resulted in (or would reasonably expect to cause or result in) a material adverse effect on the legality, priority or enforceability of the Lien created by this Agreement or the rights and remedies of the Collateral Agent hereunder

"Company" shall have the meaning assigned to such term in the Preamble hereof

"Contested Liens" shall mean, collectively, any Liens incurred in respect of any Charges to the extent that the amounts owing in respect thereof are not yet delinquent or are being contested and otherwise comply with the provisions of Section 4 13 hereof, provided, however, that such Liens shall in all respects be subject and subordinate in priority to the Liens and security interests created and evi-denced by this Agreement, except if and to the extent that the law or regulation creating, permitting or authorizing such Lien provides that such Lien must be superior to the Liens and security interests created and evidenced hereby

"Contracts" shall mean, collectively, with respect to the Company, all sale, service, performance, equipment or property lease contracts, agreements and grants and all other contracts, agreements or grants (in each case, whether written or oral, or third party or intercompany), between the Company and third parties, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof relating to the Pledged Collateral

"Control" shall mean (i) in the case of each Deposit Account, "control," as such term is defined in Section 9-104 of the UCC

"Control Agreement" shall mean an agreement in form and substance acceptable to the Collateral Agent

"Convertible Preferred Stock" shall have the meaning assigned to such term in Recital B hereof

"Copyrights" shall mean, collectively, with respect to the Company, all copyrights (whether statutory or common law, whether established or registered in the United States or any other country or any political subdivision thereof whether registered or unregistered and whether published or unpublished) relating to the Pledged Collateral and all copyright registrations and applications made by the Company, in each case, whether now owned or hereafter created or acquired by or assigned to the Company, including, without limitation, the copyrights, registrations and applications listed in Annex B attached hereto, together with any and all (i) rights and privileges arising under applicable law with respect to the Company's use of such copyrights, (ii) reissues, renewals, continuations and extensions thereof, (iii) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present or future infringements thereof

"Deposit Accounts" shall mean, collectively, with respect to the Company, (i) all "deposit accounts" as such term is defined in the UCC in connection with the Pledged Collateral and (ii) all cash, funds, checks, notes and instruments from time to time on deposit in any of the accounts described in clause (i) of this definition

"Destruction" shall mean any and all damage to, or loss or destruction of, all or any portion of the Pledged Collateral

"Excluded Property" shall mean Special Property other than the following

(a) the right to receive any payment of money (including, without limitation, Accounts, General Intangibles and Payment Intangibles) or any other rights referred to in Sections 9-406(f), 9-407(a) or 9-408(a) of the UCC, and

(b) any Proceeds, substitutions or replacements of any Special Property (unless such Proceeds, substitutions or replacements would constitute Special Property)

"FDA" shall mean the United States Food and Drug Administration, or any successor entity

"General Intangibles" shall mean, collectively, with respect to the Company, all "general intangibles," as such term is defined in the UCC, of the Company relating to the Pledged Collateral and, in any event, shall include, without limitation, (i) all of the Company's rights, title and interest in, to and under all Insurance Policies and Contracts, (ii) all know-how and warranties relating to any of the Pledged Collateral, (iii) any and all other rights, claims, choses-in-action and causes of action of the Company against any other Person and the benefits of any and all collateral or other security given by any other Person in connection therewith, (iv) all guarantees, endorsements and indemnifications on, or of, any of the Pledged Collateral, (v) all lists, books, records, correspondence, ledgers, print-outs, files (whether in printed form or stored electronically), tapes and other papers or materials containing information relating to any of the Pledged Collateral, including, without limitation, all customer or tenant lists, identification of suppliers, data, plans, blueprints, specifications, designs, drawings, appraisals, recorded knowledge, surveys, studies, engineering reports, test reports, manuals, standards, processing standards, performance standards, catalogs, research data, computer and automatic machinery software and programs and the like, field repair data, accounting information pertaining to the Company s operations or any of the Pledged Collateral and all media in which or on which any of the information or knowledge or data or records may be recorded or stored and all computer programs used for the compilation or printout of such information, knowledge, records or data, (vi) all licenses, consents, permits, variances, certifications, authorizations and approvals, however characterized, of any Governmental Authority (or any Person acting on behalf of a Governmental Authority) now or hereafter acquired or held by the Company pertaining to operations now or hereafter conducted by the Company or any of the Pledged Collateral including, without limitation, building permits, certificates of occupancy, environmental certificates, industrial permits or licenses and certificates of operation and (vii) all rights to reserves, deferred payments, deposits, refunds, indemnification of claims to the extent the foregoing relate to any Pledged Collateral and claims for tax or other refunds against any Governmental Authority relating to any Pledged Collateral

"Goodwill" shall mean, collectively, with respect to the Company, the goodwill connected with the Pledged Collateral including, without limitation, (i) all goodwill connected with the use of and symbolized by any of the Intellectual Property Collateral in which the Company has any interest and (ii) all know-how, trade secrets, customer and supplier lists, proprietary information, inventions, methods, procedures, formulae, descriptions, compositions, technical data, drawings, specifications, name plates, catalogs, confidential information and the right to limit the use or disclosure thereof by any Person, pricing and cost information, business and marketing plans and proposals, consulting agreements, engineering contracts and such other assets which relate to such goodwill

"Governmental Authority" shall mean any Federal, state, local, foreign or other governmental, quasi-governmental or administrative (including self-regulatory) body, instrumentality, department, agency, authority, board, bureau, commission, office of any nature whatsoever or other subdivision thereof, or any court, tribunal, administrative hearing body, arbitration panel or other similar dispute-resolving body, whether now or hereafter in existence, or any officer or official thereof, having jurisdiction over the Company or the Pledged Collateral or any portion thereof

"Indemnified Liabilities" shall have the meaning assigned to such term in Section 10 4(i) hereof

"Indemnitees" shall have the meaning assigned to such term in Section 10 4(i) hereof

"Insurance Policies" shall mean the insurance policies and coverages required to be maintained by the Company with respect to the Pledged Collateral pursuant to Paragraph 5H of the Securities Purchase Agreement and all renewals and extensions thereof

"Insurance Requirements" means, collectively, with respect to the Company, all provisions of the Insurance Policies, all requirements of the Company of any of the Insurance Policies and all orders, rules, regulations and any other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) binding upon the Company and applicable to the Pledged Collateral or any use or condition thereof

"Intellectual Property Collateral" shall mean, collectively, the Patents, Trademarks, Copyrights, Licenses, Know-How, Internet Names, Trade Dress and Goodwill relating to the Pledged Collateral

"Intercreditor Agreement" means that certain Intercreditor Agreement, dated as of the date hereof, among the Purchaser and the Collateral Agent and acknowledged by the Company

"Internet Names" shall mean all web addresses, domain names and phone numbers held in the Company's name and the applications and registrations therefor

"Know-How" shall mean any and all Manufacturing Know-How, product specifications, processes, product designs, plans, trade secrets, ideas, concepts, inventions, manufacturing, engineering and other manuals and drawings, standard operating procedures, formulae, flow diagrams, chemical, pharmacological, toxicological, pharmaceutical, physical, analytical, safety, quality assurance, quality control and clinical data, technical information, research records, and all other confidential or proprietary technical and business information that is currently owned by the Company or is in the future developed by or for the Company and used exclusively in the Business For the sake of clarity, none of the foregoing information shall be included in Know-How to the extent that such information is covered by any claim of any Patent

"Licenses" shall mean, collectively, with respect to the Company, all license and distribution agreements with, and covenants not to sue, any other party with respect to any Patent, Trademark or Copyright, whether the Company is a licensor or licensee, distributor or distributee under any such license or distribution agreement, including, without limitation, the license and distribution agreements listed in Annexes A and B attached hereto, together with any and all (i) renewals, extensions, supplements and continuations thereof, (ii) income, fees, royalties, damages, claims and payments now and hereafter due and/or payable thereunder and with respect thereto including, without limitation, damages and payments for past, present or future infringements or violations thereof, (iii) rights to sue for past, present and future infringements or violations thereof and (iv) other rights to use, exploit or practice any or all of the Patents, Trademarks or Copyrights

"Manufacturing Know-How" shall mean the percentages and specifications of ingredients, the manufacturing processes, specifications, technology, inventions, assays, quality control and testing procedures, know-how and trade secrets owned by the Company and used exclusively to manu-

facture, formulate, test and package the Product for sale, marketing and distribution For the sake of clarity, none of the foregoing information shall be included in Know-How to the extent that such information is covered by any claim of any Patent

"Marketing Materials" shall mean all marketing materials, marketing research data, customer and sales information, product literature, promotional materials and data, advertising and display materials and all training materials in whatever medium (e g , audio, visual or print) held in the Company's name and exclusively related to the Business

"Material Intellectual Property" means Intellectual Property Collateral owned by or in which the Company has any interest which is material to its business

"NDA" shall mean any new drug application filed pursuant to the requirements of the FDA, as more fully defined in 21 C F R § 314 5 *et seq* , and any equivalent application filed with any Governmental Authority

"Notes" shall have the meaning assigned to such term in Recital A hereof

"Operative Agreement" shall mean (i) in the case of any limited liability company or partnership or other non-corporate entity, any membership or partnership agreement or other organizational agreement or document thereof and (ii) in the case of any corporation, any charter or certificate of incorporation and by-laws thereof

"Patents" shall mean, collectively, with respect to the Company, all patents issued or assigned to and all patent applications and registrations made by the Company relating to the Pledged Collateral (whether established or registered or recorded in the United States or any other country or any political subdivision thereof), including, without limitation, those listed in Annex A attached hereto, together with any and all (i) rights and privileges arising under applicable law with respect to the Company's use of any such patents, (ii) inventions and improvements described and claimed therein, (iii) reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (iv) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable thereunder and with respect thereto including, without limitation, damages and payments for past, present or future infringements thereof, (v) rights corresponding thereto throughout the world and (vi) rights to sue for past, present or future infringements thereof

"Perfection Certificate" shall mean that certain Perfection Certificate dated June 25, 2002, executed and delivered by the Company in favor of the Collateral Agent for the benefit of the Secured Parties, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time upon the request of the Collateral Agent

"Permitted Collateral Liens" shall have the meaning assigned to such term in Section 4 3 hereof

"Pledged Collateral" shall have the meaning assigned to such term in Sections 2 1 hereof

"Preferred Stock" shall have the meaning assigned to such term in Recital B hereof

"Preferred Stock Purchase Agreement" shall have the meaning assigned to such term in Recital B hereof

"Prior Liens" shall mean, collectively, the Liens identified in Schedule 1 1 attached hereto relating to the items of Pledged Collateral identified in such Schedule

"Product" shall mean VANIQA® (eflornithine hydrochloride) Cream, in all current and future presentations and formulations

"Product Registrations" shall mean the NDAs (including any Marketing Authorization Approvals) and comparable regulatory filings and approvals for the Product held in the Company's name

"Prudent Operator" shall mean the standard of care taken by a prudent operator of property and assets similar in use and configuration to the Pledged Collateral, as the case may be, and located in the locality where the Pledged Collateral, as the case may be, is located

"Purchase Agreements" shall have the meaning assigned to such term in Recital B hereof

"Regulatory Documentation" shall mean all (a) regulatory filings and supporting documents, chemistry, manufacturing and controls data and documentation, preclinical and clinical studies and tests, (b) records maintained under record keeping or reporting requirements of the FDA, or any other Governmental Authority including without limitation the drug master file and Investigational New Drug application, and (c) the complete complaint, adverse event and medical inquiry filings with respect to the Product, in each case held in the Company's name and in each case exclusively related to the Business, including the Product Registrations

"Requirements of Law" shall mean, collectively, any and all requirements of any Governmental Authority including, without limitation, any and all laws, ordinances, rules, regulations or similar statutes or case law

"Secured Obligations" shall mean all obligations (whether or not constituting future advances, obligatory or otherwise) of the Company from time to time arising under or in respect of this Agreement, the Purchase Agreements, the Securities, the Preferred Stock, the Certificate of Designation and the other Security Documents (including, without limitation, the obligations to pay principal, interest and all other charges, fees, expenses, commissions, reimbursements, premiums, indemnities and other payments related to or in respect of the obligations contained in this Agreement, the Purchase Agreements, the Securities, the Preferred Stock, the Certificate of Designation and the other Security Documents), in each case whether (i) such obligations are direct or indirect, secured or unsecured, joint or several, absolute or contingent, due or to become due whether at stated maturity, by acceleration or otherwise, (ii) arising in the regular course of business or otherwise, (iii) for payment or performance and/or (iv) now existing or hereafter arising (including, without limitation, interest and other obligations arising or accruing after the commencement of any bankruptcy, insolvency, reorganization or similar proceeding with respect to the Company or any other Person, or which would have arisen or accrued but for the commencement of such proceeding, even if such obligation or the claim therefor is not enforceable or allowable in such proceeding)

"Secured Parties" shall mean, collectively, the Collateral Agent and the holders of the Securities and the Preferred Stock

"Securities" shall have the meaning assigned to such term in Recital A hereof

"Securities Purchase Agreement" shall have the meaning assigned to such term in Recital A hereof

"Security Documents" means this Agreement, the Perfection Certificate, and each other security document or pledge agreement required by applicable law to grant a valid, perfected Lien on and security interest in the Collateral, and all UCC or other financing statements or instruments of perfection required by this Agreement and the Acquisition Documents and any other document or instrument utilized to pledge any Property of whatever kind or nature as collateral for the Debt

"Special Property" shall mean

(a) any permit, lease or license held by the Company that validly prohibits the creation by the Company of a security interest therein,

(b) any permit, lease or license held by the Company to the extent that any Requirement of Law applicable thereto prohibits the creation of a security interest therein, and

(c) Equipment owned by the Company on the date hereof or hereafter acquired that is subject to a Lien securing a Purchase Money Indebtedness or Capitalized Lease Obligations permitted to be incurred pursuant to the provisions of the Purchase Agreements if the contract or other agreement in which such Lien is granted (or the documentation providing for such Purchase Money Indebtedness or Capitalized Lease Obligation) validly prohibits the creation of any other Lien on such Equipment,

provided, however, that in each case described in clauses (a), (b) and (c) of this definition, such property shall constitute "Special Property" only to the extent and for so long as such permit, lease, license, contract or other agreement or Requirement of Law applicable thereto, validly prohibits the creation of a Lien on such property in favor of the Collateral Agent and, upon the termination of such prohibition (howsoever occurring), such property shall cease to constitute "Special Property"

"Subordinated Liens" shall have the meaning assigned to such term in Sections 4 3 hereof

"Successor Interests" shall mean, collectively, with respect to the Company, all shares of each class of the capital stock of the successor corporation or interests or certificates of the successor limited liability company, partnership or other entity owned by the Company (unless such successor is the Company itself) formed by or resulting from any consolidation or merger in which any Person listed in Schedule 1(a) annexed to the Perfection Certificate is not the surviving entity, provided, however, that the pledge of the Successor Interests affected hereby shall in no event affect the obligations of the Company under any provision prohibiting such action hereunder or under the Purchase Agreements

"Taking" shall mean any taking of the Pledged Collateral or any portion thereof, in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or by reason of the temporary requisition of the use of the Pledged Collateral or any portion thereof, by any Governmental Authority, civil or military

"Tax Code" shall mean the Internal Revenue Code of 1986, as amended from time to time

"Trade Dress" shall mean the trade dress and packaging, including without limitation the registered trade dress held in the Company's name and in exclusively used in the Business

"Trademarks" shall mean, collectively, with respect to the Company, all trademarks (including service marks), logos, slogans, logos, certification marks, trade dress, uniform resource locations (URL's), domain names, corporate names and trade names, whether registered or unregistered, owned by or assigned to the Company relating to the Pledged Collateral and all registrations and applications for the foregoing (whether statutory or common law and whether established or registered in the United States or any other Country or any political subdivision thereof), including, without limitation, the registrations and applications listed in Annex A attached hereto, together with any and all (i) rights and privileges arising under applicable law with respect to the Company's use of any such trademarks, (ii) reissues, continuations, extensions and renewals thereof, (iii) income, fees, royalties, damages and payments now and hereafter due and/or payable thereunder and with respect thereto, including, without limitation, damages, claims and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present and future infringements thereof

"UCC" shall mean the Uniform Commercial Code as in effect on the date hereof in the State of New York, provided, however, that if by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the Collateral Agent's and the Secured Parties' security interest in any item or portion of the Pledged Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect on the date hereof in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions relating to such provisions

SECTION 1 2 Interpretation The rules of construction set forth in Paragraph 10 of the Securities Purchase Agreements shall be applicable to this Agreement

SECTION 1 3 Resolution of Drafting Ambiguities The Company acknowledges and agrees that it was represented by counsel in connection with the execution and delivery hereof, that it and its counsel reviewed and participated in the preparation and negotiation hereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (i e , the Collateral Agent) shall not be employed in the interpretation hereof

ARTICLE II

GRANT OF SECURITY AND SECURED OBLIGATIONS

SECTION 2 1 Pledge-First Priority As collateral security for the payment and performance in full of all the Secured Obligations, the Company hereby pledges and grants to the Collateral Agent for its benefit and for the benefit of the holders of the Securities, a first priority lien on and security interest in and to all of the right, title and interest of the Company in, to and under the following property, wherever located, whether now existing or hereafter arising or acquired from time to time (collectively, the "Pledged Collateral")

(i) all Accounts relating exclusively to the Collateral,

(ii) all Equipment, Goods, Inventory and Fixtures relating exclusively to the Collateral,

(iii) all Documents, Instruments and Chattel Paper relating exclusively to the Collateral,

(iv) all Intellectual Property Collateral relating exclusively to the Collateral,

(v) the Commercial Tort Claims described on Schedule 16 to the Perfection Certificate relating exclusively to the Collateral,

(vi) all General Intangibles relating exclusively to the Collateral (including, without limitation, rights arising under common law, statutes, or regulations, new drug applications and modifications thereof),

(vii) the Acquisition Documents and Acquisition Document Rights,

(viii) all books and records relating exclusively to the Collateral,

(ix) all Marketing Materials relating exclusively to the Collateral,

(x) all Regulatory Documentation relating exclusively to the Collateral, and

(xi) to the extent not covered by clauses (i) through (vii) of this sentence, all other Proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and profits and products of, each of the foregoing, any and all proceeds of any insurance, indemnity, warranty or guaranty payable to the Company from time to time with respect to any of the foregoing

Notwithstanding anything to the contrary contained in clauses (i) through (viii) above, the security interests created by this Agreement shall not extend to, and the term "Pledged Collateral" shall not include, any Excluded Property and (i) the Company shall from time to time at the request of the Collateral Agent give written notice to the Collateral Agent identifying in reasonable detail the Special Property (and stating in such notice that such Special Property constitutes "Excluded Property") and shall provide to the Collateral Agent such other information regarding the Special Property as the Collateral Agent may reasonably request and (ii) from and after the Date of Closing, the Company shall not permit to become effective in any document creating, governing or providing for any permit, lease or license, a provision that would prohibit the creation of a Lien on such permit, lease or license in favor of the Collateral Agent unless the Company believes, in its reasonable judgment, that such prohibition is usual and customary in transactions of such type

SECTION 2 2 Pledge-Second Priority As collateral security for the payment and performance in full of all the Secured Obligations, the Company hereby pledges and grants to the Collateral Agent for its benefit and for the benefit of the holders of Preferred Stock, a second priority lien on and security interest in and to all of the right, title and interest of the Company in, to and under the Pledged Collateral, wherever located, whether now existing or hereafter arising or acquired from time to time, provided that notwithstanding the foregoing, (i) no representation or warranty is made by the Company in this Agreement, with respect to the validity or enforceability of this Section 2 2 with respect to the rights, if any, of the Secured Parties under this Section 2 2, including with respect the creation or perfection of a

security interest, and the relative priority of any such security interest, or the effect of the federal Bankruptcy Code and comparable provisions of state law, and other applicable antifraud laws, securities laws usury laws or public policy considerations on the rights, if any, of the Secured Parties under this Section 2 2, and (ii) the Company shall not be held accountable for any failure to create, perfect or maintain a security interest pursuant to this Section 2 2 by reason of the foregoing, however, provided further, the Company shall not, and shall not permit any of its subsidiaries to, directly or indirectly, challenge the enforceability, validity or perfection of the security interest created pursuant to this Section 2 2 for the benefit of the Collateral Agent for the benefit of the Secured Parties, or their transferees or assigns, on the Collateral, except in the context of (i) any derivative actions brought on behalf of the Company and (ii) proceedings under the Federal Bankruptcy Code or similar state proceedings, to the extent required by law

SECTION 2 3 Secured Obligations This Agreement secures, and the Pledged Collateral is collateral security for, the payment and performance in full when due of the Secured Obligations

SECTION 2 4 Security Interests (a) The Company hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction any initial financing statements (including fixture filings) and amendments thereto that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment relating to the Pledged Collateral, including, without limitation, whether the Company is an organization, the type of organization and any organizational identification number issued to the Company The Company agrees to provide all information described in the immediately preceding sentence to the Collateral Agent promptly upon request

(b) The Company hereby ratifies its authorization for the Collateral Agent to file in any relevant jurisdiction any initial financing statements or amendments thereto relating to the Pledged Collateral if filed prior to the date hereof

(c) The Company hereby further authorizes the Collateral Agent to file filings with the United States Patent and Trademark Office or United States Copyright Office (or any successor office or any similar office in any other country) or other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interests granted by the Company hereunder, without the signature of the Company, and naming the Company, as debtor, and the Collateral Agent, as secured party

SECTION 2 5 No Release Nothing set forth in this Agreement shall relieve the Company from the performance of any term, covenant, condition or agreement on the Company's part to be performed or observed under or in respect of any of the Pledged Collateral or from any liability to any Person under or in respect of any of the Pledged Collateral or shall impose any obligation on the Collateral Agent or any other Secured Party to perform or observe any such term, covenant, condition or agreement on the Company's part to be so performed or observed or shall impose any liability on the Collateral Agent or any other Secured Party for any act or omission on the part of the Company relating thereto or for any breach of any representation or warranty on the part of the Company contained in this Agreement, the Purchase Agreements, the Securities, the Preferred Stock or the other Security Documents, or under or in respect of the Pledged Collateral or made in connection herewith or therewith The obligations of the Company contained in this Section 2 5 shall survive the termination hereof and the discharge of the Company's other obligations under this Agreement and the Purchase Agreements, the Securities, the Preferred Stock, the Certificate of Designation and the other Security Documents

ARTICLE III

PERFECTION, SUPPLEMENTS, FURTHER ASSURANCES, USE OF PLEDGED COLLATERAL

SECTION 3 1 Financing Statements and Other Filings, Maintenance of Perfected Security Interest The only filings, registrations and recordings necessary and appropriate to create, preserve, protect, publish notice of and perfect the security interests granted by the Company to the Collateral Agent (for the benefit of the Secured Parties) pursuant to this Agreement in respect of the Pledged Collateral are listed in Schedule 7 of the Perfection Certificate All such filings, registrations and recordings have been delivered to the Collateral Agent in completed and, to the extent necessary or appropriate, duly executed form for filing in each governmental, municipal or other office specified in Schedule 7 of the Perfection Certificate and shall be filed, registered and recorded immediately after the date thereof The Company agrees that at the sole cost and expense of the Company, (i) the Company will maintain the security interests created by this Agreement in the Pledged Collateral as perfected security interests having at least the priority required hereunder and shall defend such security interests against the claims and demands of all Persons, (ii) the Company will furnish to the Collateral Agent from time to time statements and schedules further identifying and describing the Pledged Collateral and such other reports in connection with the Pledged Collateral as the Collateral Agent may reasonably request, all in reasonable detail and (iii) at any time and from time to time, upon the written request of the Collateral Agent, the Company will promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further action as the Collateral Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including the filing of any financing or continuation statement under the UCC (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby and the execution and delivery of Control Agreements

SECTION 3 2 Other Actions In order to further insure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, the Collateral Agent's security interests in the Pledged Collateral, the Company agrees, in each case at the Company's own expense, to take the following actions with respect to the following Pledged Collateral

(a) Instruments and Tangible Chattel Paper As of the date hereof, the Company hereby represents and warrants that no amount individually or in the aggregate in excess of $100,000 payable under or in connection with any of the Collateral is evidenced by any Instrument or Tangible Chattel Paper other than such Instruments and Tangible Chattel Paper listed in Schedule 13 of the Perfection Certificate If any amount individually or in the aggregate in excess of $100,000 payable under or in connection with any of the Collateral shall be evidenced by any Instrument or Tangible Chattel Paper, the Company shall forthwith endorse, assign and deliver the same to the Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time specify, provided, however, that so long as no Event of Default shall have occurred and be continuing, the Collateral Agent shall return such Instrument or Tangible Chattel Paper to the Company from time to time, to the extent necessary for collection in the ordinary course of the Company's business

(b) Deposit Accounts The Company hereby represents and warrants that it has neither opened nor maintains any Deposit Accounts related to the Collateral other than the ac-

counts listed in Schedule 17 of the Perfection Certificate The Company shall not hereafter establish and maintain any Deposit Account related to the Collateral unless (1) the Company shall have given the Collateral Agent 30 days' prior written notice of its intention to establish such new Deposit Account with a Bank, (2) such Bank shall be reasonably acceptable to the Collateral Agent and (3) such Bank and the Company shall have duly executed and delivered to the Collateral Agent a Control Agreement with respect to such Deposit Account The Collateral Agent agrees with the Company that the Collateral Agent shall not give any instructions directing the disposition of funds from time to time credited to any Deposit Account related to the Collateral or withhold any withdrawal rights from the Company with respect to funds from time to time credited to any Deposit Account related to the Collateral unless an Event of Default has occurred and is continuing, or, after giving effect to any withdrawal that would occur The provisions of this Section 3 2(b) shall not apply to such Deposit Accounts related to the Collateral for which the Collateral Agent is the Bank The Company shall not grant Control of any Deposit Account related to the Collateral to any Person other than the Collateral Agent

(c) Commercial Tort Claims As of the date hereof the Company hereby represents and warrants that it holds no Commercial Tort Claims related to the Collateral other than those listed in Schedule 16 of the Perfection Certificate If the Company shall at any time hold or acquire a Commercial Tort Claim related to the Collateral having a value individually or in the aggregate in excess of $100,000, the Company shall immediately notify the Collateral Agent in writing signed by the Company of the brief details thereof and grant to the Collateral Agent in such writing a security interest therein and in the Proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Collateral Agent

SECTION 3 3 Use and Pledge of Pledged Collateral Unless an Event of Default shall have occurred and be continuing, the Collateral Agent shall from time to time execute and deliver, upon written request of the Company and at the sole cost and expense of the Company, any and all instruments, certificates or other documents, in a form reasonably requested by the Company, necessary or appropriate in the reasonable judgment of the Company to enable the Company to continue to exploit, license, use, enjoy and protect the Pledged Collateral in accordance with the terms hereof and of the Purchase Agreements and the Acquisition Documents The Company and the Collateral Agent acknowledge that this Agreement is intended to grant to the Collateral Agent for the benefit of the Secured Parties security interests in and Liens upon the Pledged Collateral and shall not constitute or create a present assignment of any of the Pledged Collateral

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND COVENANTS

The Company represents, warrants and covenants as follows

SECTION 4 1 Title, Authority and Validity, Preservation of Corporate Existence (1) The Company (A) has good and valid rights in and title to the Pledged Collateral with respect to which it has purported to grant security interests and Liens hereunder, (B) has full power and authority to grant to the Collateral Agent the security interests in and Liens on such Pledged Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement,

without the consent or approval of any other Person other than any consent or approval that has been obtained, (C) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (D) it is duly qualified to transact business and is in good standing in each state in which the Pledged Collateral is located and (E) this Agreement is a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms

(ii) The Company shall (A) preserve and maintain in full force and effect its existence and good standing under the laws of the jurisdiction of its organization, (B) preserve and maintain in full force and effect its qualification to transact business and good standing in the state in which the Pledged Collateral is located and (C) preserve and maintain in full force and effect all consents, authorizations and approvals necessary or required of any Governmental Authority or any other Person relating to the execution, delivery and performance hereof

SECTION 4 2 Validity of Security Interests The security interests in and Liens on the Pledged Collateral granted to the Collateral Agent for the benefit of the Secured Parties hereunder constitutes (a) legal and valid security interests in all the Pledged Collateral securing the payment and performance of the Secured Obligations, and (b) subject to the filings described in Schedule 7 of the Perfection Certificate, perfected security interests in all the Pledged Collateral Subject to Section 2 2 of this Agreement, the security interests and Liens granted to the Collateral Agent for the benefit of the Secured Parties pursuant to this Agreement in and on the Pledged Collateral will at all times constitute perfected, continuing first and second priority security interests therein, superior and prior to the rights of all other Persons therein other than in the case of any Pledged Collateral with respect to the holders of Permitted Collateral Liens

SECTION 4 3 Limitation on Liens The Company is as of the date hereof, and, as to Pledged Collateral acquired by it from time to time after the date hereof, the Company will be, the sole direct and beneficial owner or licensee of all Pledged Collateral pledged by it hereunder free from any Lien or other right, title or interest of any Person other than (i) Prior Liens, (ii) the Lien and security interests created by this Agreement, (iii) Contested Liens and (iv) the Liens described in Paragraph 6G of the Securities Purchase Agreement (the Liens described in clauses (i) through (iv) of this sentence, collectively, "Permitted Collateral Liens") The Company shall, at its own cost and expense, defend title to the Pledged Collateral pledged by it hereunder and the security interests therein and Liens thereon granted to the Collateral Agent and the priority thereof against all claims and demands of all Persons, at its own cost and expense, at any time claiming any interest therein adverse to the Collateral Agent or any other Secured Party There is no agreement, and no Company shall enter into any agreement or take any other action, that would result in the imposition of any other Lien, restrict the transferability of any of the Pledged Collateral or otherwise impair or conflict with the Company's obligations or the rights of the Collateral Agent hereunder, provided, that if the obligations under the Securities shall no longer be outstanding (whether by maturity, redemption or otherwise), the Company may, upon notice to the Collateral Agent, grant a Lien in the Pledged Collateral to a third-party that is subordinated to the Liens granted under this Agreement ("Subordinated Liens")

SECTION 4 4 Other Financing Statements There is no (nor will there be any) valid or effective financing statement (or similar statement or instrument of registration under the law of any jurisdiction) covering or purporting to cover any interest of any kind in the Pledged Collateral other than in the case of Pledged Collateral financing statements relating to Permitted Collateral Liens So long as any of the Secured Obligations remain unpaid, the Company shall not execute, authorize or permit to be filed in any public office any financing statement (or similar statement or instrument of registration under the

law of any jurisdiction) or statements relating to any Pledged Collateral, except, in the case of any Pledged Collateral, financing statements filed or to be filed in respect of and covering the security interests granted by the Company to the holders of the Permitted Collateral Liens and Subordinated Liens

SECTION 4 5 Chief Executive Office, Change of Name, Jurisdiction of Organization (a) The exact legal name, type of organization, jurisdiction of organization, Federal Taxpayer Identification Number, organizational identification number and chief executive office of the Company is indicated next to its name in Schedules 1(a) and 2(a) of the Perfection Certificate The Company shall not change (i) its corporate name, (ii) the location of its chief executive office, its principal place of business, any office in which it maintains books or records relating to Pledged Collateral owned by it or any office or facility at which Pledged Collateral owned by it is located (including the establishment of any such new office or facility), (iii) its identity or type of organization or corporate structure, (iv) its Federal Taxpayer Identification Number or organizational identification number or (v) its jurisdiction of organization (in each case, including, without limitation, by merging with or into any other entity, reorganizing, dissolving, liquidating, reincorporating or incorporating in any other jurisdiction) until (A) it shall have given the Collateral Agent not less than 30 days' prior written notice (in the form of an Officers' Certificate) of its intention so to do, clearly describing such change and providing such other information in connection therewith as the Collateral Agent may reasonably request and (B) with respect to such change, the Company shall have taken all action reasonably satisfactory to the Collateral Agent to maintain the perfection and priority of the security interests of the Collateral Agent for the benefit of the Secured Parties in the Pledged Collateral intended to be granted hereunder, including, without limitation, using commercially reasonable efforts to obtain waivers of landlord's or warehousemen's liens with respect to such new location, if applicable The Company agrees to promptly provide the Collateral Agent with certified organizational documents reflecting any of the changes described in the preceding sentence

(b) The Collateral Agent may rely on opinions of counsel as to whether any or all UCC financing statements of the Company need to be amended as a result of any of the changes described in Section 4 5(a) If the Company fails to provide information to the Collateral Agent about such changes on a timely basis, the Collateral Agent shall not be liable or responsible to any party for any failure to maintain perfected security interests in the Company's property constituting Pledged Collateral, for which the Collateral Agent needed to have information relating to such changes The Collateral Agent shall have no duty to inquire about such changes if the Company does not inform the Collateral Agent of such changes, the parties acknowledging and agreeing that it would not be feasible or practical for the Collateral Agent to search for information on such changes if such information is not provided by the Company

SECTION 4 6 Location of Inventory and Equipment All Equipment and Inventory constituting Pledged Collateral of the Company is located at the chief executive office or such other location listed in Schedules 2(a), 2(b), 2(c), 2(d) or 2(e) of the Perfection Certificate The Company shall not move any Equipment or Inventory exclusively related to the Collateral to any location other than one within the Continental United States that is listed in such Schedules of the Perfection Certificate with respect to the Company until (i) it shall have given the Collateral Agent not less than 30 days' prior written notice (in the form of an Officers' Certificate) of its intention so to do, clearly describing such new location within the Continental United States and providing such other information in connection therewith as the Collateral Agent may request and (ii) with respect to such new location, the Company shall have taken all action reasonably satisfactory to the Collateral Agent to maintain the perfection and priority of the security interests of the Collateral Agent for the benefit of the Secured Parties in the Pledged Collateral intended to be granted hereby, including, without limitation, using commercially reasonable

efforts to obtain waivers of landlord s or warehouseman's liens with respect to such new location, if applicable

SECTION 4 7 Condition and Maintenance of Equipment The Equipment constituting Pledged Collateral of the Company is in good repair, working order and condition, reasonable wear and tear excepted The Company shall cause any Equipment acquired exclusively in connection with the Collateral to be maintained and preserved in good repair, working order and condition, reasonable wear and tear excepted, and shall as quickly as commercially practicable make or cause to be made all repairs, replacements and other improvements which are necessary or appropriate in the conduct of the Company's business

SECTION 4 8 Corporate Names, Prior Transactions The Company has not, during the past five years, been known by or used any other corporate or fictitious name or been a party to any merger or consolidation, or acquired all or substantially all of the assets of any Person, or acquired any of its property or assets out of the ordinary course of business, except as set forth in Schedules 1(b), 1(c) and 4 of the Perfection Certificate

SECTION 4 9 No Claims The Company owns or has rights to use all of the Pledged Collateral pledged by it hereunder and all rights with respect to any of the foregoing used in, necessary for or material to the Company's business as currently conducted The use by the Company of such Pledged Collateral and all such rights with respect to the foregoing do not infringe on the rights of any Person other than such infringement which would not, individually or in the aggregate, result in a Collateral Material Adverse Effect No claim has been made and remains outstanding that the Company's use of any Pledged Collateral does or may violate the rights of any third Person that would individually, or in the aggregate, have a Collateral Material Adverse Effect

SECTION 4 10 No Conflicts, Consents, etc Neither the execution and delivery hereof by the Company nor the consummation of the transactions herein contemplated nor the fulfillment of the terms hereof (i) violates any Operative Agreement of the Company, (ii) violates the terms of any agreement, indenture, mortgage, deed of trust, equipment lease, instrument or other document to which the Company is a party, or by which it may be bound or to which any of its properties or assets may be subject, which violation would, individually or in the aggregate, have a Collateral Material Adverse Effect, (iii) conflicts with any Requirement of Law applicable to any the Company or its property, which conflict would, individually or in the aggregate, have a Collateral Material Adverse Effect, or (iv) results in or requires the creation or imposition of any Lien (other than the Liens contemplated hereby) upon or with respect to any of the property now owned or hereafter acquired by the Company No consent of any party (including, without limitation, equityholders or creditors of the Company) and no consent, authorization, approval, license or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or other Person is required (A) for the pledge by the Company of the Pledged Collateral pledged by it pursuant to this Agreement or for the execution, delivery or performance hereof by the Company, except as set forth in Schedule 4 10 attached hereto, (B) for the exercise by the Collateral Agent of the rights provided for in this Agreement or (C) for the exercise by the Collateral Agent of the remedies in respect of the Pledged Collateral pursuant to this Agreement In the event that the Collateral Agent desires to exercise any remedies, rights and powers set forth in this Agreement and determines it necessary to obtain any approvals or consents of any Governmental Authority or any other Person therefor, then, upon the reasonable request of the Collateral Agent, the Company agrees to use its best efforts to assist and aid the Collateral Agent to obtain as soon as practicable any necessary approvals or consents for the exercise of any such remedies, rights and powers

SECTION 4 11 Pledged Collateral All information set forth herein, including the schedules attached hereto, and all information contained in any documents, schedules and lists heretofore delivered to any Secured Party in connection with this Agreement, in each case, relating to the Pledged Collateral, is accurate and complete in all material respects The Pledged Collateral described on the schedules attached hereto constitutes all of the property of such type of Pledged Collateral owned or held by the Company

SECTION 4 12 Insurance (a) The Company, at its own expense, shall maintain or cause to be maintained the insurance policies and coverages required under Paragraph 5H of the Purchase Agreements with respect to the Pledged Collateral

(b) If there shall occur any Destruction, individually or in the aggregate, in excess of $100,000, the Company shall promptly send to the Collateral Agent a written notice setting forth the nature and extent of such Destruction If there shall occur any Taking, the applicable Company shall immediately notify the Collateral Agent upon receiving notice of such Taking or commencement of proceedings therefor The Net Insurance Proceeds are hereby assigned and shall be paid to the Collateral Agent The Company shall take all steps necessary to notify the condemning authority of such assignment All Net Insurance Proceeds shall be applied in accordance with the provisions of Paragraph 5H of the Securities Purchase Agreement

(c) In the event that the proceeds of any insurance claim are paid after the Collateral Agent has exercised its right to foreclose after an Event of Default such proceeds shall be paid to the Collateral Agent to satisfy any deficiency remaining after such foreclosure The Collateral Agent shall retain its interest in the Insurance Policies required to be maintained pursuant to this Agreement during any redemption period

SECTION 4 13 Payment of Taxes, Compliance with Laws, Contesting Liens, Claims The Company represents and warrants that all Charges imposed upon or assessed against the Pledged Collateral have been paid and discharged except to the extent such Charges constitute a Lien not yet due and payable or a Permitted Collateral Lien The Company shall comply with all Requirements of Law applicable to the Pledged Collateral the failure to comply with which would, individually or in the aggregate, have a Collateral Material Adverse Effect The Company may at its own expense contest the validity, amount or applicability of any Charges so long as the contest thereof shall be conducted in accordance with, and permitted pursuant to the provisions of, the Purchase Agreements Notwithstanding the foregoing provisions of this Section 4 13, (i) no contest of any such obligation may be pursued by the Company if such contest would expose the Collateral Agent or any other Secured Party to (A) any possible criminal liability or (B) any additional civil liability for failure to comply with such obligations unless the Company shall have furnished a bond or other security therefor satisfactory to the Collateral Agent, or such Secured Party, as the case may be, and (ii) if at any time payment or performance of any obligation contested by the Company pursuant to this Section 4 13 shall become necessary to prevent the imposition of remedies because of non-payment, the Company shall pay or perform the same, in sufficient time to prevent the imposition of remedies in respect of such default or prospective default

SECTION 4 14 Access to Pledged Collateral, Books and Records, Other Information Upon reasonable request and prior notice to the Company, the Collateral Agent, its agents, accountants and attorneys shall have full and free access to visit and inspect, as applicable, during normal business hours and such other reasonable times as may be requested by the Collateral Agent all of the Pledged Collateral including, without limitation, all of the books, correspondence and records of the Company

relating thereto The Collateral Agent and its representatives may examine the same, take extracts therefrom and make photocopies thereof, and the Company agrees to render to the Collateral Agent, at the Company's cost and expense, such clerical and other assistance as may be reasonably requested by the Collateral Agent with regard thereto The Company shall, at any and all times, within a reasonable time after written request by the Collateral Agent, furnish or cause to be furnished to the Collateral Agent, in such manner and in such detail as may be reasonably requested by the Collateral Agent, additional information with respect to the Pledged Collateral

ARTICLE V

CERTAIN PROVISIONS CONCERNING INTELLECTUAL PROPERTY COLLATERAL

SECTION 5 1 Grant of License For the purpose of enabling the Collateral Agent, during the continuance of an Event of Default, to exercise rights and remedies under Article VIII hereof at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, the Company hereby grants to the Collateral Agent, to the extent assignable, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to the Company) to use, assign, license or sublicense any of the Intellectual Property Collateral now owned or hereafter acquired by the Company, wherever the same may be located, including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout hereof

SECTION 5 2 Registrations Except pursuant to licenses and other user agreements entered into by the Company in the ordinary course of business that are listed in Annexes A and B attached hereto, on and as of the date hereof (i) the Company owns and possesses the right to use, and has done nothing to authorize or enable any other Person to use, any Copyright, Patent or Trademark listed in Annexes A and B attached hereto, and (ii) to the Company's knowledge, all registrations listed in Annexes A and B attached hereto are valid and in full force and effect

SECTION 5 3 No Violations or Proceedings To the Company's knowledge, on and as of the date hereof, (i) except as set forth in Schedule 5 3 attached hereto, there is no material violation by others of any right of the Company with respect to any Copyright, Patent or Trademark listed in Annexes A and B attached hereto, respectively, pledged by it under the name of the Company, (ii) the Company is not infringing upon any Copyright, Patent or Trademark of any other Person other than such infringement that, individually or in the aggregate, would not (or would not reasonably be expected to) result in a material adverse effect on the value or utility of the Intellectual Property Collateral or any portion thereof material to the use and operation of the Pledged Collateral and (iii) no proceedings have been instituted or are pending against the Company or, to the Company's knowledge, threatened, and no claim against the Company has been received by the Company, alleging any such violation, except as may be set forth in Schedule 5 3

SECTION 5 4 Protection of Collateral Agent's Security On a continuing basis, the Company shall, at its sole cost and expense, (i) promptly following its becoming aware thereof, notify the Collateral Agent of (A) any materially adverse determination in any proceeding in the United States Patent and Trademark Office or the United States Copyright Office with respect to any material Patent,

Trademark or Copyright in relation to the Collateral or (B) the institution of any proceeding or any adverse determination in any Federal, state or local court or administrative body regarding the Company's claim of ownership in or right to use any of the Intellectual Property Collateral material to the use and operation of the Pledged Collateral, its right to register such Intellectual Property Collateral or its right to keep and maintain such registration in full force and effect, (ii) to the extent permitted under the Acquisition Documents, maintain and protect the Intellectual Property Collateral material to the use and operation of the Pledged Collateral as presently used and operated and as contemplated by the Purchase Agreements, (iii) to the extent permitted under the Acquisition Documents, not permit to lapse or become abandoned any Intellectual Property Collateral material to the use and operation of the Pledged Collateral as presently used and operated and as contemplated by the Purchase Agreements, and not settle or compromise any pending or future litigation or administrative proceeding with respect to such Intellectual Property Collateral, in each case except as shall be consistent with commercially reasonable business judgment, (iv) upon the Company obtaining knowledge thereof, promptly notify the Collateral Agent in writing of any event which may be reasonably expected to materially and adversely affect the value or utility of the Intellectual Property Collateral or any portion thereof material to the use and operation of the Pledged Collateral, the ability of the Company or the Collateral Agent to dispose of the Intellectual Property Collateral or any portion thereof or the rights and remedies of the Collateral Agent in relation thereto including, without limitation, a levy or threat of levy or any legal process against the Intellectual Property Collateral or any portion thereof, (v) not license the Intellectual Property Collateral other than licenses entered into by the Company in, or incidental to, the ordinary course of business, or amend or permit the amendment of any of the licenses in a manner that materially and adversely affects the right to receive payments thereunder, or in any manner that would materially impair the value of the Intellectual Property Collateral or the Liens on and security interests in the Intellectual Property Collateral intended to be granted to the Collateral Agent for the benefit of the Secured Parties, without the consent of the Collateral Agent, (vi) until the Collateral Agent exercises its rights to make collection, diligently keep adequate records respecting the Intellectual Property Collateral and (vii) furnish to the Collateral Agent from time to time upon the Collateral Agent's reasonable request therefor detailed statements and amended schedules further identifying and describing the Intellectual Property Collateral and such other materials evidencing or reports pertaining to the Intellectual Property Collateral as the Collateral Agent may from time to time request

SECTION 5 5 After-Acquired Property If the Company shall, at any time before the Secured Obligations have been paid in full (other than contingent indemnification obligations which, pursuant to the provisions of the Purchase Agreements or the collateral documents, survive the termination thereof), (i) obtain any rights to any additional Intellectual Property Collateral or (ii) become entitled to the benefit of any additional Intellectual Property Collateral or any renewal or extension thereof, including any reissue, division, continuation, or continuation-in-part of any Intellectual Property Collateral, or any improvement on any Intellectual Property Collateral, the provisions hereof shall automatically apply thereto and any such item enumerated in clause (i) or (ii) of this Section 5 5 with respect to the Company shall automatically constitute Intellectual Property Collateral if such would have constituted Intellectual Property Collateral at the time of execution hereof and be subject to the Liens and security interests created by this Agreement without further action by any party The Company shall promptly (x) provide to the Collateral Agent written notice of any of the foregoing and (y) confirm the attachment of the Liens and security interests created by this Agreement to any rights described in clauses (x) and (y) of the immediately preceding sentence of this Section 5 5 by execution of an instrument in form reasonably acceptable to the Collateral Agent

SECTION 5 6 Modifications The Company authorizes the Collateral Agent to modify this Agreement by amending Annexes A and B attached hereto to include any Intellectual Property Collateral acquired or arising after the date hereof of the Company including, without limitation, any of the items listed in Section 5 5 hereof

SECTION 5 7 Litigation Unless there shall occur and be continuing any Event of Default, the Company shall have the right to commence and prosecute in its own name, as the party in interest, for its own benefit and at the sole cost and expense of the Company, such applications for protection of the Intellectual Property Collateral and suits, proceedings or other actions to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value or other damage as are necessary to protect the Intellectual Property Collateral Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent shall have the right but shall in no way be obligated to file applications for protection of the Intellectual Property Collateral and/or bring suit in the name of the Company, the Collateral Agent or the Secured Parties to enforce the Intellectual Property Collateral and any license thereunder In the event of such suit, the Company shall, at the reasonable request of the Collateral Agent, do any and all lawful acts and execute any and all documents requested by the Collateral Agent in aid of such enforcement and the Company shall promptly reimburse and indemnify the Collateral Agent, as the case may be, for all costs and expenses incurred by the Collateral Agent in the exercise of its rights under this Section 5 7 in accordance with Section 10 3 hereof In the event that the Collateral Agent shall elect not to bring suit to enforce the Intellectual Property Collateral, the Company agrees, at the reasonable request of the Collateral Agent, to take all commercially reasonable actions necessary, whether by suit, proceeding or other action, to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value of or other damage to any of the Intellectual Property Collateral by others and for that purpose agrees to diligently maintain any suit, proceeding or other action against any Person so infringing necessary to prevent such infringement

ARTICLE VI

CERTAIN PROVISIONS CONCERNING ACCOUNTS

SECTION 6 1 Special Representations and Warranties As of the time when each of its Accounts in relation to the Collateral arises, the Company shall be deemed to have represented and warranted that such Account and all records, papers and documents relating thereto (i) are genuine and correct and in all material respects what they purport to be, (ii) represent the legal, valid and binding obligation of the account debtor, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability, evidencing indebtedness unpaid and owed by such account debtor, arising out of the performance of labor or services or the sale, lease, license, assignment or other disposition and delivery of the goods or other property listed therein or out of an advance or a loan, (iii) will, in the case of an Account relating to the Collateral, except for the original or duplicate original invoice sent to a purchaser evidencing such purchaser's account, be the only original writings evidencing and embodying such obligation of the account debtor named therein and (iv) are in all material respects in compliance and conform with all applicable Federal, state and local laws and applicable laws of any relevant foreign jurisdiction

SECTION 6 2 Maintenance of Records The Company shall keep and maintain at its own cost and expense complete records of each Account in relation to the Collateral, in a manner consistent with prudent business practice, including, without limitation, records of all payments received, all credits granted thereon, all merchandise returned and all other documentation relating thereto The Company shall, at the Company's sole cost and expense, upon the Collateral Agent's demand made at any time after the occurrence and during the continuance of any Event of Default, deliver all tangible evidence of Accounts related to the Collateral, including, without limitation, all documents evidencing Accounts related to the Collateral and any books and records relating thereto to the Collateral Agent or to its representatives (copies of which evidence and books and records may be retained by the Company) Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent may transfer a full and complete copy of the Company's books, records, credit information, reports, memoranda and all other writings relating to the Accounts related to the Collateral to and for the use by any Person that has acquired or is contemplating acquisition of an interest in the Accounts related to the Collateral or the Collateral Agent's security interests therein without the consent of the Company

SECTION 6 3 Legend The Company shall legend, at the request of the Collateral Agent made at any time after the occurrence of any Event of Default and in form and manner satisfactory to the Collateral Agent, the Accounts related to the Collateral and the other books, records and documents of the Company evidencing or pertaining to the Accounts related to the Collateral with an appropriate reference to the fact that the Accounts related to the Collateral have been assigned to the Collateral Agent for the benefit of the Secured Parties and that the Collateral Agent has security interests therein

SECTION 6 4 Modification of Terms, etc The Company shall not rescind or cancel any indebtedness evidenced by any Account related to the Collateral or modify any term thereof or make any adjustment with respect thereto except in the ordinary course of business consistent with prudent business practice, or extend or renew any such indebtedness except in the ordinary course of business consistent with prudent business practice or compromise or settle any dispute, claim, suit or legal proceeding relating thereto or sell any Account related to the Collateral or interest therein except in the ordinary course of business consistent with prudent business practice without the prior written consent of the Collateral Agent The Company shall timely fulfill all obligations on its part to be fulfilled under or in connection with the Accounts related to the Collateral

SECTION 6 5 Collection The Company shall cause to be collected from the account debtor of each of the Accounts related to the Collateral, as and when due in the ordinary course of business consistent with prudent business practice (including, without limitation, Accounts related to the Collateral that are delinquent, such Accounts to be collected in accordance with generally accepted commercial collection procedures), any and all amounts owing under or on account of such Account, and apply forthwith upon receipt thereof all such amounts as are so collected to the outstanding balance of such Account, except that the Company may, with respect to an Account related to the Collateral, allow in the ordinary course of business (i) a refund or credit due as a result of returned or damaged or defective merchandise and (ii) such extensions of time to pay amounts due in respect of Accounts related to the Collateral and such other modifications of payment terms or settlements in respect of Accounts related to the Collateral as shall be commercially reasonable in the circumstances, all in accordance with the Company's ordinary course of business consistent with its collection practices as in effect from time to time The costs and expenses (including, without limitation, reasonable attorneys' fees) of collection, in any case, whether incurred by the Company, the Collateral Agent or any Secured Party, shall be paid by the Company

ARTICLE VII

TRANSFERS AND OTHER LIENS

SECTION 7 1 Transfers of and other Liens on Pledged Collateral The Company shall not (i) sell, convey, assign or otherwise dispose of, or grant any option with respect to, any of the Pledged Collateral pledged by it hereunder except as permitted by the Purchase Agreements or (ii) create or permit to exist any Lien upon or with respect to any of the Pledged Collateral pledged by it hereunder other than in the case of Pledged Collateral, Permitted Collateral Liens and Subordinated Liens

ARTICLE VIII

REMEDIES

SECTION 8 1 Remedies (a) Upon the occurrence and during the continuance of any Event of Default the Collateral Agent may from time to time exercise in respect of the Pledged Collateral, in addition to the other rights and remedies provided for herein or otherwise available to it

(i) Personally, or by agents or attorneys, immediately take possession of the Pledged Collateral or any part thereof, from the Company or any other Person who then has possession of any part thereof with or without notice or process of law, and for that purpose may enter upon the Company's premises where any of the Pledged Collateral is located, remove such Pledged Collateral, remain present at such premises to receive copies of all communications and remittances relating to the Pledged Collateral and use in connection with such removal and possession any and all services, supplies, aids and other facilities of the Company,

(ii) Demand, sue for, collect or receive any money or property at any time payable or receivable in respect of the Pledged Collateral including, without limitation, instructing the obligor or obligors on any agreement, instrument or other obligation constituting part of the Pledged Collateral to make any payment required by the terms of such agreement, instrument or other obligation directly to the Collateral Agent, and in connection with any of the foregoing, compromise, settle, extend the time for payment and make other modifications with respect thereto, provided, however, that in the event that any such payments are made directly to the Company, prior to receipt by any such obligor of such instruction, the Company shall segregate all amounts received pursuant thereto in trust for the benefit of the Collateral Agent and shall promptly (but in no event later than two Business Days after receipt thereof) pay such amounts to the Collateral Agent,

(iii) Sell, assign, grant a license to use or otherwise liquidate, or direct the Company to sell, assign, grant a license to use or otherwise liquidate, any and all investments made in whole or in part with the Pledged Collateral or any part thereof, and take possession of the proceeds of any such sale, assignment, license or liquidation,

(iv) Take possession of the Pledged Collateral or any part thereof, by directing the Company in writing to deliver the same to the Collateral Agent at any place or places so designated by the Collateral Agent, in which event the Company shall at its own expense

(A) forthwith cause the same to be moved to the place or places designated by the Collateral Agent and there delivered to the Collateral Agent, (B) store and keep any Pledged Collateral so delivered to the Collateral Agent at such place or places pending further action by the Collateral Agent and (C) while the Pledged Collateral shall be so stored and kept, provide such security and maintenance services as shall be necessary to protect the same and to preserve and maintain them in good condition The Company's obligation to deliver the Pledged Collateral as contemplated in this Section 8 1(iv) is of the essence hereof Upon application to a court of equity having jurisdiction, the Collateral Agent shall be entitled to a decree requiring specific performance by the Company of such obligation,

(v) Withdraw all moneys, instruments, securities and other property in any bank, financial securities, deposit or other account of the Company constituting Pledged Collateral for application to the Secured Obligations as provided in Article IX hereof,

(vi) Require the Company to execute and deliver to the Secured Parties an assignment of the Intellectual Property Collateral (the "IP Assignment") The Company hereby authorizes the Secured Parties to complete as Assignee and record with the United States Patent and Trademark Office and the United States Copyright Office each IP Assignment,

(vii) Exercise any and all rights as beneficial and legal owner of the Pledged Collateral, including, without limitation, perfecting assignment of and exercising any and all consensual and other rights and powers with respect to any Pledged Collateral, and

(viii) All the rights and remedies of a secured party on default under the UCC, and the Collateral Agent may also in its sole discretion, without notice except as specified in Section 8 2 hereof, sell, assign or grant a license to use the Pledged Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable The Collateral Agent or any other Secured Party or any of their respective Affiliates may be the purchaser, licensee, assignee or recipient of any or all of the Pledged Collateral at any such sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Pledged Collateral sold, assigned or licensed at such sale, to use and apply any of the Secured Obligations owed to such Person as a credit on account of the purchase price of any Pledged Collateral payable by such Person at such sale Each purchaser, assignee, licensee or recipient at any such sale shall acquire the property sold, assigned or licensed absolutely free from any claim or right on the part of the Company, and the Company hereby waives, to the fullest extent permitted by law, all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted The Collateral Agent shall not be obligated to make any sale of Pledged Collateral regardless of notice of sale having been given The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned The Company hereby waives, to the fullest extent permitted by law, any claims against the Collateral Agent arising by reason of the fact that the price at which any Pledged Collateral may have been sold, assigned or licensed at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Pledged Collateral to more than one offeree

SECTION 8 2 Notice of Sale The Company acknowledges and agrees that, to the extent notice of sale or other disposition of Pledged Collateral shall be required by law, 10 days' prior notice to the Company of the time and place of any public sale or of the time after which any private sale or other intended disposition is to take place shall be commercially reasonable notification of such matters No notification need be given to the Company if it has signed, after the occurrence of an Event of Default, a statement renouncing or modifying any right to notification of sale or other intended disposition

SECTION 8 3 Waiver of Notice and Claims The Company hereby waives, to the fullest extent permitted by applicable law, notice or judicial hearing in connection with the Collateral Agent's taking possession or the Collateral Agent's disposition of any of the Pledged Collateral, including, without limitation, any and all prior notice and hearing for any prejudgment remedy or remedies and any such right which the Company would otherwise have under law, and the Company hereby further waives, to the fullest extent permitted by applicable law (i) all damages occasioned by such taking of possession, (ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Collateral Agent's rights hereunder and (iii) all rights of redemption, appraisal, valuation, stay, extension or moratorium now or hereafter in force under any applicable law The Collateral Agent shall not be liable for any incorrect or improper payment made pursuant to this Article VIII in the absence of gross negligence or willful misconduct Any sale of, or the grant of options to purchase, or any other realization upon, any Pledged Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the Company therein and thereto, and shall be a perpetual bar both at law and in equity against the Company and against any and all Persons claiming or attempting to claim the Pledged Collateral so sold, optioned or realized upon, or any part thereof, from, through or under the Company

SECTION 8 4 Certain Sales of Pledged Collateral

(i) The Company recognizes that, by reason of certain prohibitions contained in law, rules, regulations or orders of any Governmental Authority, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Pledged Collateral, to limit purchasers to those who meet the requirements of such Governmental Authority The Company acknowledges that any such sales may be at prices and on terms less favorable to the Collateral Agent than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agrees that any such restricted sale shall be deemed to have been made in a commercially reasonable manner and that, except as may be required by applicable law, the Collateral Agent shall have no obligation to engage in public sales

(ii) The Company further agrees that a breach of any of the covenants contained in this Section 8 4 will cause irreparable injury to the Collateral Agent and other Secured Parties, that the Collateral Agent and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 8 4 shall be specifically enforceable against the Company, and the Company hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing

SECTION 8 5 No Waiver, Cumulative Remedies

(i) No failure on the part of the Collateral Agent to exercise, no course of dealing with respect to, and no delay on the part of the Collateral Agent in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy, nor shall the Collateral Agent be required to look first to, enforce or exhaust any other security, collateral or guaranties The remedies herein provided are cumulative and are not exclusive of any remedies provided by law

(ii) In the event that the Collateral Agent shall have instituted any proceeding to enforce any right, power or remedy under this Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Collateral Agent, then and in every such case, the Company, the Collateral Agent and each other Secured Party shall be restored to their respective former positions and rights hereunder with respect to the Pledged Collateral, and all rights, remedies and powers of the Collateral Agent and the other Secured Parties shall continue as if no such proceeding had been instituted

SECTION 8 6 Certain Additional Actions Regarding Intellectual Property If any Event of Default shall have occurred and be continuing, upon the written demand of Collateral Agent, the Company shall execute and deliver to Collateral Agent an assignment or assignments of the registered Patents, Trademarks and/or Copyrights related to the Collateral and such other documents as are necessary or appropriate to carry out the intent and purposes hereof Within five Business Days of written notice thereafter from Collateral Agent, the Company shall make available to Collateral Agent, to the extent within the Company's power and authority, such personnel in the Company's employ on the date of the Event of Default as Collateral Agent may reasonably designate to permit the Company to continue, directly or indirectly, to produce, advertise and sell the products and services sold by the Company under the registered Patents, Trademarks and/or Copyrights related to the Collateral, and such persons shall be available to perform their prior functions on Collateral Agent's behalf

ARTICLE IX

APPLICATION OF PROCEEDS

The proceeds received by the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Pledged Collateral pursuant to the exercise by the Collateral Agent of its remedies as a secured creditor as provided in Article VIII hereof shall be applied, together with any other sums then held by the Collateral Agent in the manner set forth in the Intercreditor Agreement

ARTICLE X

MISCELLANEOUS

SECTION 10 1 Concerning the Collateral Agent

(i) The Collateral Agent has been appointed as collateral agent pursuant to the Intercreditor Agreement The actions of the Collateral Agent hereunder are subject to the provisions of the Intercreditor Agreement The Collateral Agent shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action (including, without limitation, the release or substitution of the Pledged Collateral), in accordance with this Agreement and the Intercreditor Agreement The Collateral Agent may employ agents and attorneys-in-fact in connection herewith and shall not be liable for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith The Collateral Agent may resign and a successor Collateral Agent may be appointed in the manner provided in the Intercreditor Agreement Upon the acceptance of any appointment as the Collateral Agent by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent under this Agreement, and the retiring Collateral Agent shall thereupon be discharged from its duties and obligations under this Agreement After any retiring Collateral Agent's resignation, the provisions hereof shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Collateral Agent

(ii) The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral in its possession if such Pledged Collateral is accorded treatment substantially equivalent to that which the Collateral Agent, in its individual capacity, accords its own property consisting of similar instruments or interests, it being understood that neither the Collateral Agent nor any of the Secured Parties shall have responsibility for taking any necessary steps to preserve rights against any Person with respect to any Pledged Collateral

(iii) The Collateral Agent shall be entitled to rely upon any written notice, statement, certificate, order or other document believed by it to be genuine and correct and to have been signed, sent or made by the proper person, and, with respect to all matters pertaining to this Agreement and its duties hereunder, upon advice of counsel selected by it

(iv) If any item of Pledged Collateral also constitutes collateral granted to Collateral Agent under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions hereof and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect of such collateral, the Collateral Agent, in its sole discretion, shall select which provision or provisions shall control

SECTION 10 2 Collateral Agent May Perform, Collateral Agent Appointed Attorney-in-Fact If the Company shall fail to perform any covenants contained in this Agreement (including, without limitation, the Company's covenants to (i) pay the premiums in respect of all required insurance policies hereunder, (ii) pay Charges, (iii) make repairs, (iv) discharge Liens or (v) pay or perform any obligations of the Company under any Pledged Collateral) or if any warranty on the part of the Company contained herein shall be breached, the Collateral Agent may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose, provided, however, that

Collateral Agent shall in no event be bound to inquire into the validity of any tax, lien, imposition or other obligation which the Company fails to pay or perform as and when required hereby and which the Company does not contest in accordance in accordance with the provision of Section 4 13 hereof Any and all amounts so expended by the Collateral Agent shall be paid by the Company in accordance with the provisions of Section 10 3 hereof Neither the provisions of this Section 10 2 nor any action taken by Collateral Agent pursuant to the provisions of this Section 10 2 shall prevent any such failure to observe any covenant contained in this Agreement nor any breach of warranty form constituting an Event of Default The Company hereby appoints the Collateral Agent its attorney-in-fact, with full authority in the place and stead of the Company and in the name of the Company, or otherwise, from time to time in the Collateral Agent's discretion to take any action and to execute any instrument consistent with the terms of the Intercreditor Agreement and the other collateral documents which the Collateral Agent may deem necessary or advisable to accomplish the purposes hereof The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof The Company hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof

SECTION 10 3 Expenses The Company will upon demand pay to the Collateral Agent the amount of any and all costs and expenses, including the fees and expenses of its counsel and the fees and expenses of any experts and agents which the Collateral Agent may incur in connection with (i) any action, suit or other proceeding affecting the Pledged Collateral or any part thereof commenced, in which action, suit or proceeding the Collateral Agent is made a party or participates or in which the right to use the Pledged Collateral or any part thereof is threatened, or in which it becomes necessary in the judgment of the Collateral Agent to defend or uphold the Liens hereof (including, without limitation, any action, suit or proceeding to establish or uphold the compliance of the Pledged Collateral with any requirements of any Governmental Authority or law), (ii) the collection of the Secured Obligations, (iii) the enforcement and administration hereof, (iv) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Pledged Collateral, (v) the exercise or enforcement of any of the rights of the Collateral Agent or any Secured Party hereunder or (vi) the failure by the Company to perform or observe any of the provisions hereof All amounts expended by the Collateral Agent and payable by the Company under this Section 10 3 shall be due upon demand therefor (together with interest thereon accruing at the highest rate then in effect under the Purchase Agreements during the period from and including the date on which such funds were so expended to the date of repayment) and shall be part of the Secured Obligations The Company's obligations under this Section 10 3 shall survive the termination hereof and the discharge of the Company's other obligations under this Agreement, the Purchase Agreements and the other collateral documents

SECTION 10 4 Indemnity

(i) Indemnity The Company agrees to indemnify, pay and hold harmless the Collateral Agent and each of the other Secured Parties and the officers, directors, employees, agents and Affiliates of the Collateral Agent and each of the other Secured Parties (collectively, the "Indemnitees") from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs (including, without limitation, settlement costs), expenses or disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding, commenced or threatened, whether or not such Indemnitee shall be designated a party thereto) which may be imposed on, incurred by, or asserted against that Indemnitee, in any manner relating to or arising out of this Agreement, the Purchase Agreements, the Securities, the Preferred Stock, the Certificate of Designation any other collateral document or any other document evidencing the Secured Obligations

(including, without limitation, any misrepresentation by the Company in this Agreement, the Purchase Agreements, the Securities, the Preferred Stock, other collateral document or any other document evidencing the Secured Obligations) (the "Indemnified Liabilities"), provided, however, that no Company shall have any obligation to an Indemnitee hereunder with respect to Indemnified Liabilities if it has been determined by a final decision (after all appeals and the expiration of time to appeal) of a court of competent jurisdiction that such Indemnified Liabilities arose from the gross negligence or willful misconduct of that Indemnitee To the extent that the undertaking to indemnify, pay and hold harmless set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, the Company shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them

(ii) Survival The obligations of the Company's contained in this Section 10 4 shall survive the termination hereof and the discharge of the Company's other obligations under this Agreement, the Purchase Agreements and under the other collateral documents

(iii) Reimbursement Any amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement shall constitute Secured Obligations secured by the Pledged Collateral

SECTION 10 5 Continuing Security Interests, Assignment This Agreement shall create a continuing security interest in the Pledged Collateral and shall (i) be binding upon the Company, their respective successors and assigns and (ii) inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent and the other Secured Parties and each of their respective successors, transferees and assigns No other Persons (including, without limitation, any other creditor of the Company) shall have any interest herein or any right or benefit with respect hereto Without limiting the generality of the foregoing clause (ii), any Secured Party may assign or otherwise transfer any indebtedness held by it secured by this Agreement to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Secured Party, herein or otherwise

SECTION 10 6 Termination, Release The Pledged Collateral shall be released from the Liens of this Agreement in accordance with the provisions of the Purchase Agreements Upon termination hereof or any release of Pledged Collateral in accordance with the provisions of the Purchase Agreements, the Collateral Agent shall, upon the request and at the sole cost and expense of the Company, assign, transfer and deliver to Company, against receipt and without recourse to or warranty by the Collateral Agent, such of the Pledged Collateral to be released (in the case of a release) as may be in possession of the Collateral Agent and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Pledged Collateral, proper documents and instruments (including UCC-3 termination statements or releases) acknowledging the termination hereof or the release of such Pledged Collateral, as the case may be

SECTION 10 7 Modification in Writing No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by the Company therefrom, shall be effective unless the same shall be made in accordance with the terms of the Purchase Agreements and the Certificate of Designation unless in writing and signed by the Collateral Agent Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by the Company from the terms of any provision hereof shall be

effective only in the specific instance and for the specific purpose for which made or given Except where notice is specifically required by this Agreement or any other document evidencing the Secured Obligations, no notice to or demand on the Company in any case shall entitle the Company to any other or further notice or demand in similar or other circumstances

SECTION 10 8 Notices Unless otherwise provided herein or in the Purchase Agreements, any notice or other communication herein required or permitted to be given shall be given in the manner and become effective as set forth in the Purchase Agreements, as to the Company, addressed to it at the address of the Company set forth in the Purchase Agreements and as to the Collateral Agent, addressed to it at the address set forth in the Intercreditor Agreement, or in each case at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 10 8

SECTION 10 9 GOVERNING LAW THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK

SECTION 10 10 CONSENT TO JURISDICTION AND SERVICE OF PROCESS, WAIVER OF JURY TRIAL ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST THE COMPANY WITH RESPECT TO THIS AGREEMENT MAY BE BROUGHT IN THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY, THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK AND APPELLATE COURTS OF ANY THEREOF, AND BY EXECUTION AND DELIVERY HEREOF, THE COMPANY ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT THE COMPANY AGREES THAT SERVICE OF PROCESS IN ANY PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO THE COMPANY AT ITS ADDRESS SET FORTH IN THE PURCHASE AGREEMENTS OR AT SUCH OTHER ADDRESS OF WHICH THE COLLATERAL AGENT SHALL HAVE BEEN NOTIFIED PURSUANT THERETO IF ANY AGENT APPOINTED BY THE COMPANY REFUSES TO ACCEPT SERVICE, THE COMPANY HEREBY AGREES THAT SERVICE UPON IT BY MAIL SHALL CONSTITUTE SUFFICIENT NOTICE NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF THE COLLATERAL AGENT TO BRING PROCEEDINGS AGAINST THE COMPANY IN THE COURTS OF ANY OTHER JURISDICTION THE COMPANY HEREBY IRREVOCABLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY

SECTION 10 11 Severability of Provisions Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction

SECTION 10 12 Execution in Counterparts This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different

parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement

SECTION 10 13 Business Days In the event any time period or any date provided in this Agreement ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the next succeeding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day

SECTION 10 14 No Credit for Payment of Taxes or Imposition The Company shall not be entitled to any credit against the principal, premium, if any, or interest payable under the Security Purchase Agreement or the Securities, or any liquidation preference or dividends under the Preferred Stock Purchase Agreement or the Preferred Stock, and the Company shall not be entitled to any credit against any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any Tax on the Pledged Collateral or any part thereof

SECTION 10 15 No Claims Against Collateral Agent Nothing contained in this Agreement shall constitute any consent or request by the Collateral Agent, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Pledged Collateral or any part thereof, nor as giving the Company any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Collateral Agent in respect thereof or any claim that any Lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the Liens hereof

SECTION 10 16 Obligations Absolute All obligations of the Company hereunder shall be absolute and unconditional irrespective of

(i) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of the Company,

(ii) any lack of validity or enforceability of the Purchase Agreements, the Securities, the Preferred Stock or any other collateral document, or any other agreement or instrument relating thereto,

(iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from the Purchase Agreements, the Securities, the Preferred Stock or any other collateral document, or any other agreement or instrument relating thereto,

(iv) any pledge, exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations,

(v) any exercise, non-exercise or waiver of any right, remedy, power or privilege under or in respect hereof, the Purchase Agreements, the Securities, the Preferred Stock or any other collateral document except as specifically set forth in a waiver granted pursuant to the provisions of Section 10 7 hereof, or

(vi) any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Company

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Company and the Collateral Agent have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written

WOMEN FIRST HEALTHCARE, INC

By _____
Name
Title

CIBC WMC INC ,
as Collateral Agent

By _____
Name
Title

IN WITNESS WHEREOF, the Company and the Collateral Agent have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written

WOMEN FIRST HEALTHCARE, INC

By _____
Name
Title

CIBC WMC INC ,
as Collateral Agent

By _____
Name
Title

SCHEDULE 1.1

Prior Liens

DEBTOR	JURISDICTION	SECURED PARTY	FILE NUMBER/DATE	COLLATERAL
None				

SCHEDULE 4.10

Required Consents

None

SCHEDULE 5 3

Violations or Proceedings

None

EXHIBIT 1

COMPANY ACKNOWLEDGMENT

The undersigned hereby (i) acknowledges receipt of a copy of that certain security agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement", capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Security Agreement), dated as of June 25, 2002, among Women First HealthCare, Inc (the "Company"), and CIBC WMC Inc , as Collateral Agent (in such capacity and together with any successors in such capacity, the "Collateral Agent"), and (ii) agrees promptly to note on its books the security interests granted to the Collateral Agent and confirmed under the Security Agreement

[ ]

By _____

Name

Title

ANNEX A

PATENTS, PATENT LICENSES, TRADEMARKS AND TRADEMARK LICENSES

PATENTS

Patent Registrations None

Patent Applications

OWNER	APPLICATION NUMBER	APPLICATION DATE	COUNTRY	DESCRIPTION
Bristol-Myers Squibb	60/315,832	8/29/01	U S A	Process for the production of alpha-difluoromethyl ornithine
Bristol-Myers Squibb	60/312,657	8/15/01	U S A	Topical composition for follicular delivery of an ornithine decarboxylase inhibitor

Patent Licenses None

TRADEMARKS

Trademark Name	Country	Status	Application No	Filing Date		Reg. Date	Next Renewal
BALD IS BETTER	U S A	Allowed	78/008488	5/17/00			
BALD IS CONFIDENCE	U S A	Allowed	78/007867	5/12/00			
FACE NEWS	U S A	Allowed	78/036799	11/28/00			
VANIQA	U S A	Registered	75/724299	6/8/99	2466423	7/3/01	7/3/2011
VANIQA & DESIGN	U S A	Registered	76/034182	4/26/00	2546144	3/12/02	3/12/2012
UP CLOSE IS UP TO YOU/VANIQA & DESIGN	U S A	Allowed	76/178875	12/11/00			

RECYCLED

AMENDED AND RESTATED SECURITY AGREEMENT

By

WOMEN FIRST HEALTHCARE, INC ,
as Company,

THE GUARANTORS FROM TIME TO TIME PARTY HERETO
as Guarantors,

and

CIBC WMC INC ,
as Collateral Agent

Dated as of May 12, 2003

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EXHIBIT 1	Form of Issuer Acknowledgment
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EXHIBIT 2(b)	Form of Control Agreement Concerning Securities Accounts
EXHIBIT 3	Form of Bailee Letter
EXHIBIT 4	Form of Pledge Amendment
EXHIBIT 5	Form of Joinder Agreement

FL
10a

DATE
November 13, 2003

CIBC WMC
425 Lexington Ave.
New York, NY 10017

ATTN Anthony Pui

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Signature
WOMEN FIRST HEALTHCARE, INC
Duly Authorized Agent of
MAY 12, 2003
Date

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Anthony Pui, CIBC WMC Inc
Number/Street/Apt▼
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AMENDED AND RESTATED SECURITY AGREEMENT

By

WOMEN FIRST HEALTHCARE INC
as Company,

THE GUARANTORS FROM TIME TO TIME PARTY HERETO
as Guarantors,

and

CIBC WMC INC ,
as Collateral Agent

Dated as of May 12, 2003

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SECURITY AGREEMENT

AMENDED AND RESTATED SECURITY AGREEMENT (the 'Agreement') dated as of May 12, 2003, made by WOMEN FIRST HEALTHCARE, INC , a Delaware corporation having an office at 12220 El Camino Real, Suite 400, San Diego, California 92130 (the Company"), and THE GUARANTORS FROM TIME TO TIME PARTY HERETO (the 'Guarantors'), as pledgors, assignors and debtors (the Company, together with the Guarantors in such capacities and together with any successors in such capacities, the 'Issuers' and each an "Issuer") in favor of CIBC WMC INC , having an office at C/O CIBC Capital Partners, 425 Lexington Avenue, New York, New York 10017, in its capacity as Collateral Agent pursuant to the Securities Purchase Agreement and Preferred Stock Purchase Agreement (each as hereinafter defined), as pledgee, assignee and secured party (in such capacities and together with any successors in such capacities, the "Collateral Agent")

RECITALS

A The Company and the Purchasers (as defined in the Securities Purchase Agreement), in connection with the execution and delivery of that certain security agreement dated as of June 25, 2002 (the 'Original Security Agreement"), entered into the Note and Warrant Purchase Agreement, dated as of June 25, 2002, as amended by Amendment No 1 to the Note and Warrant Purchase Agreement, dated May 12, 2003 (as amended, amended and restated, supplemented or otherwise modified from time to time, the Securities Purchase Agreement'), pursuant to which the Company issued its senior secured notes due 2005 (the "Notes") in the aggregate principal amount of $28 0 million, together with warrants to purchase common stock It is contemplated that the Company may, after the date hereof, issue Additional Notes (as defined in the Securities Purchase Agreement, the Additional Notes, together with the Notes, the 'Securities") pursuant to the provisions of the Securities Purchase Agreement

B The Company and the Purchasers (as defined in the Preferred Stock Purchase Agreement), in connection with the execution and delivery of the Original Security Agreement, entered into the Preferred Stock Purchase Agreement, dated as of June 25, 2002 as amended by Amendment No 1 to the Preferred Stock Purchase Agreement, dated May 12, 2003 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Preferred Stock Purchase Agreement' and, together with the Securities Purchase Agreement, the "Purchase Agreements"), pursuant to which the Company initially issued Senior Convertible Redeemable Preferred Stock, Series A in the initial stated value of $13 0 million which the Company is exchanging on the date hereof for shares of Senior Convertible Redeemable Preferred Stock, Series B having an initial stated value of $14 181 million (the "Preferred Stock")

C Each Guarantor has, pursuant to the Guarantee Agreement, dated May 12 2003 among other things, fully and unconditionally guaranteed the obligations of the Company under the Securities Purchase Agreement

D The Company the Collateral Agent the Guarantors and the Purchasers have agreed to amend the Securities Purchase Agreement and the Preferred Stock Purchase Agr-

Agreement subject to the execution of this Agreement for the mutual benefit of the parties hereto and the Secured Parties (as defined below)

E The Issuers are or as to Collateral (as hereinafter defined) acquired by such Issuer after the date hereof will be, the legal and/or beneficial owner of the Collateral pledged by it hereunder

F This Agreement is given by the Issuers in favor of the Collateral Agent for the benefit of the Secured Parties (as hereinafter defined) to secure the payment and performance of all of the Secured Obligations (as hereinafter defined)

AGREEMENT

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Issuers and the Collateral Agent hereby agree as follows

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1 1 Definitions

(a) Unless otherwise defined herein, terms used herein that are defined in the UCC shall have the meanings assigned to them in the UCC, including the following terms which are capitalized herein

"Accounts' , "Bank" Chattel Paper", "Commercial Tort Claim", ' Commodity Account" "Commodity Intermediary", "Documents", "Electronic Chattel Paper" "Equipment", "Financial Asset", "Fixtures", "Instruments" (as defined in Article 9 rather than Article 3), "Inventory", "Letter-of-Credit", "Letter-of-Credit Right" "Proceeds", "Securities Account", "Securities Intermediary" and "Tangible Chattel Paper"

(b) Capitalized terms used but not otherwise defined herein that are defined in the Purchase Agreements shall have the meanings given to them in the Purchase Agreements including the following terms

"Affiliate" ' Business Day" "Capitalized Lease Obligations ' "Cash Equivalents" "Date of Closing ' Debt", 'Event of Default", "GAAP" ' Indebtedness" "Lien' ' Person" and "Purchase Money Indebtedness"

(c) The following terms shall have the following meanings

Acquisition Document Rights" shall mean with respect to the Company, collectively all of the Company s rights title and interest in, to and under the Acquisition Documents

including, without limitation (i) all rights and remedies relating to monetary damages, including indemnification rights and remedies, and claims for damages or other relief pursuant to or in respect of the Acquisition Documents, (ii) all rights and remedies relating to monetary damages, including indemnification rights and remedies, and claims for monetary damages under or in respect of the agreements, documents and instruments referred to in the Acquisition Documents or related thereto and (iii) all proceeds, collections, recoveries and rights of subrogation with respect to the foregoing

Acquisition Documents" shall mean, collectively, (i) that certain Asset Purchase Agreement dated June 25, 2002, among the Company, Westwood Squibb Colton Holdings Partnership, the Gillette Company and Bristol Myers Squibb Company (the "Asset Purchase Agreement"), (ii) that certain Supply Agreement dated June 25, 2002, among the Company, Westwood Squibb Colton Holdings Partnership, the Gillette Company and Bristol Myers Squibb Company, and (iii) that certain License Agreement dated June 25, 2002, among the Company, Westwood Squibb Colton Holdings Partnership, the Gillette Company and Bristol Myers Squibb Company, in each case, together with any and all documents, agreements and other instruments then or at any time thereafter executed and/or delivered in connection therewith or related thereto in each case as amended, amended and restated, supplemented, extended, renewed, replaced or otherwise modified from time to time

'Additional Pledged Interests shall mean, collectively, with respect to each Issuer, (i) all options, warrants, rights, agreements, additional membership or partnership interests or other interests of whatever class of any issuer of Initial Pledged Interests or any interest in any such issuer, including, without limitation, all rights, privileges, authority and powers of each Issuer relating to the equity or membership or partnership interests in any such issuer or under the Operative Agreements of any such issuer, from time to time acquired by such Issuer in any manner and (ii) all the membership, partnership or other interests, as applicable of each limited liability company, partnership or other entity (other than a corporation) hereafter acquired or formed and all options, warrants, rights, agreements, additional membership or partnership interests or other interests of whatever class of such limited liability company, partnership or other entity including, without limitation all rights, privileges, authority and powers of such Issuer relating to such equity or membership or partnership interests or under the Operative Agreements of such limited liability company, partnership or other entity, from time to time acquired by such Issuer including the certificates, instruments and agreements representing such additional interests and any and all interest of such Issuer in the entries on the books of any financial intermediary pertaining to such additional interests

Additional Pledged Shares shall mean, collectively, with respect to each Issuer (i) all options warrants, rights, agreements, additional shares of capital stock of whatever class of any issuer of the Initial Pledged Shares or any interest in any such issuer including without limitation, all rights, privileges, authority and powers of such Issuer relating to such additional shares issued by any such issuer under the Operative Agreements of any such issuer, from time to time acquired by such Issuer in any manner and (ii) all the issued and outstanding shares of capital stock of each corporation hereafter acquired or formed or shares required to be pledged under the Secured Obligations and all options warrants rights agreements or additional shares

of capital stock of whatever class of such corporation including, without limitation, all rights privileges, authority and powers of such Issuer relating to such shares or under the Operative Agreements of such corporation, from time to time acquired by such Issuer in any manner, in each case, including the certificates representing such additional shares and any and all interest of such Issuer in the entries on the books of any financial intermediary pertaining to such additional shares

'Agreement" shall mean this Agreement, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof

Bailee Letters shall have the meaning assigned to such term in Section 3 4 hereof

Bactrim" shall mean any product sold in connection with the Bactrim trademark and having the active ingredients trimethoprim and sulfamethoxazole, in all current and future presentations and formulations

"Business" shall mean the marketing and sale of pharmaceutical products and similar products into the OB/GYN, dermatological or dental markets and the sale of self-care products to midlife women through a mail-order catalog and/or internet web site

' Certificate of Designation' shall mean the Certificate of Designation of Preferences and Rights of the Senior Convertible Redeemable Preferred Stock, Series B filed with the Secretary of the State of Delaware on May 12, 2003

"Charges" shall mean any and all property and other taxes, assessments and special assessments, levies, fees and all governmental charges imposed upon or assessed against, and all claims (including without limitation, landlords', carriers', mechanics', workmen's, repairmen's, laborers', materialmen's, suppliers and warehousemen s Liens and other claims arising by operation of law) against, all or any portion of the Collateral

' Collateral" shall mean, collectively the Pledged Collateral and, to the extent the Company receives the Wyeth Consent the Second Lien Collateral

' Collateral Account Funds" shall mean, collectively, the following from time to time on deposit in a collateral account all funds (including, without limitation, all Trust Monies), investments (including, without limitation, all Cash Equivalents) and all certificates and instruments from time to time representing or evidencing such investments all notes certificates of deposit, checks and other instruments from time to time hereafter delivered to or otherwise possessed by the Collateral Agent for or on behalf of the Issuers in substitution for, or in addition to, any or all of the Collateral, and all interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the items constituting Collateral

Collateral Agent shall have the meaning assigned to such term in the Preamble of this Agreement

"Collateral Material Adverse Effect' shall mean as of any date of determination and whether individually or in the aggregate (a) any event circumstance occurrence or condition which has caused or resulted in (or would reasonably be expected to cause or result in) a material adverse effect on the business or operations as presently conducted in connection with the Collateral, (b) any event, circumstance, occurrence or condition which has caused or resulted in (or would reasonably be expected to cause or result in) a material adverse effect on the value or utility of the Collateral or (c) subject to Section 2 3 of this Agreement any event, circumstance, occurrence or condition which has caused or resulted in (or would reasonably expect to cause or result in) a material adverse effect on the legality priority or enforceability of the Lien created by this Agreement or the rights and remedies of the Collateral Agent hereunder

Company" shall have the meaning assigned to such term in the Preamble hereof

"Contested Liens ' shall mean, collectively any Liens incurred in respect of any Charges to the extent that the amounts owing in respect thereof are not yet delinquent or are being contested and otherwise comply with the provisions of Section 4 13 hereof, provided, however, that such Liens shall in all respects be subject and subordinate in priority to the Liens and security interests created and evidenced by this Agreement, except if and to the extent that the law or regulation creating, permitting or authorizing such Lien provides that such Lien must be superior to the Liens and security interests created and evidenced hereby

"Contracts" shall mean, collectively, with respect to each Issuer, all sale, service, performance, equipment or property lease contracts, agreements and grants and all other contracts, agreements or grants (in each case, whether written or oral, or third party or intercompany), between such Issuer and third parties, and all assignments, amendments, restatements supplements, extensions, renewals, replacements or modifications thereof

"Control" shall mean (i) in the case of each Deposit Account, "control, ' as such term is defined in Section 9-104 of the UCC, (ii) in the case of any Security Entitlement, 'control, ' as such term is defined in Section 8-106 of the UCC and (iii) in the case of any Commodity Contract, "control," as such term is defined in Section 9-106 of the UCC

"Control Agreement" shall mean an agreement substantially in the form annexed hereto as Exhibit 2(a) with respect to Deposit Accounts or Exhibit 2(b) with respect to Securities Accounts or Commodities Accounts or such other agreement in form and substance acceptable to the Collateral Agent

' Controlled Account" shall mean a Securities Account, Commodity Contract or a Deposit Account with respect to which the Collateral Agent has Control

"Copyrights" shall mean, collectively, with respect to each Issuer, all copyrights (whether statutory or common law, whether established or registered in the United States or any other country or any political subdivision thereof whether registered or unregistered and whether published or unpublished) and all copyright registrations and applications made by such Issuer in each case, whether now owned or hereafter created or acquired by or assigned to such Issuer including, without limitation, the copyrights registrations and applications listed in Schedule

15(b) annexed to the Perfection Certificate together with any and all (i) rights and privileges arising under applicable law with respect to such Issuer's use of such copyrights, (ii) reissues renewals, continuations and extensions thereof, (iii) income, fees royalties, damages, claims and payments now or hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present or future infringements thereof

Deposit Accounts shall mean, collectively, with respect to each Issuer (i) all "deposit accounts" as such term is defined in the UCC and (ii) all cash, funds, checks, notes and instruments from time to time on deposit in any of the accounts described in clause (i) of this definition

"Destruction' shall mean any and all damage to, or loss or destruction of all or any portion of the Collateral

'Distributions' shall mean, collectively, all dividends, cash, options, warrants, rights, instruments, distributions, returns of capital or principal, income, interest, profits and other property, interests (debt or equity) or proceeds, including as a result of a split, revision, reclassification or other like change of the Pledged Securities, from time to time received, receivable or otherwise distributed to such Issuer in respect of or in exchange for any or all of the Pledged Securities or Intercompany Notes

'Equagesic" shall mean the product having the ingredients memprobamate and aspirin and sold under the Equagesic trademark, in all current and future presentations and formulations

"Esclim ' shall mean the estrogen transdermal system sold under the Esclim trademark in all current and future presentations and formulations

"Excluded Property' shall mean Special Property other than the following

(a) Special Property described under clause (a) of the definition of Special Property to the extent that the applicable prohibition or restriction would be rendered unenforceable under Sections 9-406(f), 9-407(a) or 9-408(a) of the UCC, and

(b) any Proceeds substitutions or replacements of any Special Property described under clauses (a) through (d) of the definition thereof (unless such Proceeds, substitutions or replacements would constitute Special Property)

' FDA shall mean the United States Food and Drug Administration, or any successor entity

General Intangibles shall mean, collectively, with respect to each Issuer, all ' general intangibles ' as such term is defined in the UCC, of such Issuer relating to the Collateral and, in any event shall include, without limitation, (i) all of such Issuer's rights, title and interest

in, to and under all Insurance Policies and Contracts, (ii) all know-how and warranties relating to any of the Collateral (iii) any and all other rights, claims, choses-in-action and causes of action of such Issuer against any other Person and the benefits of any and all collateral or other security given by any other Person in connection therewith, (iv) all guarantees, endorsements and indemnifications on, or of, any of the Collateral, (v) all lists, books, records, correspondence, ledgers print-outs, files (whether in printed form or stored electronically), tapes and other papers or materials containing information relating to any of the Collateral, including without limitation, all customer or tenant lists, identification of suppliers, data, plans, blueprints, specifications, designs, drawings, appraisals, recorded knowledge, surveys, studies, engineering reports, test reports manuals, standards, processing standards, performance standards, catalogs, research data, computer and automatic machinery software and programs and the like, field repair data, accounting information pertaining to such Issuer's operations or any of the Collateral and all media in which or on which any of the information or knowledge or data or records may be recorded or stored and all computer programs used for the compilation or printout of such information, knowledge, records or data, (vi) all licenses, consents, permits, variances, certifications authorizations and approvals, however characterized, of any Governmental Authority (or any Person acting on behalf of a Governmental Authority) now or hereafter acquired or held by such Issuer pertaining to operations now or hereafter conducted by such Issuer or any of the Collateral including, without limitation, building permits, certificates of occupancy, environmental certificates, industrial permits or licenses and certificates of operation and (vii) all rights to reserves, deferred payments, deposits, refunds, indemnification of claims to the extent the foregoing relate to any Collateral and claims for tax or other refunds against any Governmental Authority relating to any Collateral

"Goodwill" shall mean, collectively, with respect to each Issuer, the goodwill connected with the Collateral including, without limitation (i) all goodwill connected with the use of and symbolized by any of the Intellectual Property Collateral in which such Issuer has any interest and (ii) all know-how, trade secrets, customer and supplier lists, proprietary information, inventions methods, procedures, formulae, descriptions, compositions, technical data, drawings, specifications, name plates, catalogs confidential information and the right to limit the use or disclosure thereof by any Person, pricing and cost information, business and marketing plans and proposals, consulting agreements, engineering contracts and such other assets which relate to such goodwill

"Governmental Authority" shall mean any Federal, state local, foreign or other governmental, quasi-governmental or administrative (including self-regulatory) body, instrumentality, department, agency, authority, board bureau, commission, office of any nature whatsoever or other subdivision thereof, or any court tribunal, administrative hearing body, arbitration panel or other similar dispute-resolving body, whether now or hereafter in existence, or any officer or official thereof, having jurisdiction over each Issuer or the Collateral or any portion thereof

Guarantor shall have the meaning assigned to it in the Guarantee Agreement

"Guarantee Agreement shall mean the Senior Secured Guarantee Agreement, dated as of the date hereof by and among the Company the Guarantors and the Purchasers

"Indemnified Liabilities" shall have the meaning assigned to such term in Section 11.4(i) hereof

' Indemnitees" shall have the meaning assigned to such term in Section 11.4(i) hereof

' Initial Pledged Interests" shall mean all membership, partnership or other equity interests (other than in a corporation), as applicable of each Issuer described in Schedule 12 annexed to the Perfection Certificate, together with all rights privileges, authority and powers of such Issuer in and to each such issuer under the Operative Agreements of each such issuer and the certificates, instruments and agreements representing such membership, partnership or other interests and any and all interest of such Issuer in the entries on the books of any financial intermediary pertaining to such membership, partnership or other interests

Initial Pledged Shares shall mean, collectively, the issued and outstanding shares of capital stock of each Issuer described in Schedule 12 annexed to the Perfection Certificate together with all rights, privileges authority and powers of such Issuer in and to each such issuer under the Operative Agreements of each such issuer, and the certificates, instruments and agreements representing such shares of capital stock and any and all interest of such Issuer in the entries on the books of any financial intermediary pertaining to the Initial Pledged Shares

"Insurance Policies" shall mean the insurance policies and coverages required to be maintained by each Issuer with respect to the Collateral pursuant to Paragraph 5H of the Securities Purchase Agreement and all renewals and extensions thereof

'Insurance Requirements" means, collectively, with respect to each Issuer, all provisions of the Insurance Policies, all requirements of such Issuer of any of the Insurance Policies and all orders rules regulations and any other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) binding upon such Issuer and applicable to the Collateral or any use or condition thereof

"Intellectual Property Collateral" shall mean, collectively, the Patents, Trademarks, Copyrights, Licenses, Know-How, Internet Names, Trade Dress and Goodwill

'Intercompany Note" shall mean, if requested by the Collateral Agent in writing, a Global Intercompany Note in form and substance acceptable to the Collateral Agent

' Intercreditor Agreement" means that certain Intercreditor Agreement, dated June 25, 2002 among the Purchaser and the Collateral Agent and acknowledged by each Issuer

Internet Names ' shall mean all web addresses, domain names and phone numbers held in the name of each Issuer or any of such Issuer s subsidiaries and the applications and registrations therefor

Investment Property' shall mean a security whether certificated or uncertificated security entitlement, securities account commodity contract or commodity account, ex-

cluding (1) Securities Collateral and (2) any property excluded from or not required to be pledged pursuant to the definition of Pledged Shares Pledged Interests or Successor Interests

Joinder Agreement shall mean the form of joinder agreement attached hereto as Exhibit 5

Know-How" shall mean any and all Manufacturing Know-How, product specifications, processes, product designs, plans, trade secrets, ideas, concepts inventions manufacturing, engineering and other manuals and drawings, standard operating procedures, formulae, flow diagrams, chemical, pharmacological, toxicological, pharmaceutical, physical analytical safety, quality assurance, quality control and clinical data, technical information, research records, and all other confidential or proprietary technical and business information that is currently owned by each Issuer or is in the future developed by or for such Issuer and used exclusively in the Business For the sake of clarity, none of the foregoing information shall be included in Know-How to the extent that such information is covered by any claim of any Patent

Licenses ' shall mean, collectively, with respect to each Issuer, all license and distribution agreements with, and covenants not to sue, any other party with respect to any Patent, Trademark or Copyright, whether such Issuer is a licensor or licensee, distributor or distributee under any such license or distribution agreement, including, without limitation, the license and distribution agreements listed in Schedules 15(a) and (b) annexed to the Perfection Certificate, together with any and all (i) renewals, extensions, supplements and continuations thereof, (ii) income, fees, royalties, damages, claims and payments now and hereafter due and/or payable thereunder and with respect thereto including, without limitation, damages and payments for past, present or future infringements or violations thereof, (iii) rights to sue for past, present and future infringements or violations thereof and (iv) other rights to use, exploit or practice any or all of the Patents, Trademarks or Copyrights

Manufacturing Know-How" shall mean the percentages and specifications of ingredients, the manufacturing processes, specifications, technology, inventions, assays, quality control and testing procedures, know-how and trade secrets owned by each Issuer and used exclusively to manufacture, formulate, test and package the Products for sale, marketing and distribution For the sake of clarity, none of the foregoing information shall be included in Know-How to the extent that such information is covered by any claim of any Patent

"Marketing Materials" shall mean all marketing materials, marketing research data, customer and sales information, product literature, promotional materials and data, advertising and display materials and all training materials in whatever medium (e g , audio, visual or print) held in each Issuer's name and exclusively related to the Business

' Material Intellectual Property" means Intellectual Property Collateral owned by or in which each Issuer has any interest which is material to its business

Midrin ' shall mean all formulations of the pharmaceutical product sold under the registered trademark Midrin®, in all current and future presentations and formulations

'NDA' shall mean any new drug application filed pursuant to the requirements of the FDA, as more fully defined in 21 C F R § 314 5 *et seq* and any equivalent application filed with any Governmental Authority

"Notes" shall have the meaning assigned to such term in Recital A hereof

'Operative Agreement" shall mean (i) in the case of any limited liability company or partnership or other non-corporate entity, any membership or partnership agreement or other organizational agreement or document thereof and (ii) in the case of any corporation, any charter or certificate of incorporation and by-laws thereof

"Ortho-Est" shall mean the estropipate product packaged under the name Ortho-Est®, in all current and future presentations and formulations

"Patents ' shall mean, collectively, with respect to each Issuer, all patents issued or assigned to and all patent applications and registrations made by such Issuer (whether established or registered or recorded in the United States or any other country or any political subdivision thereof), including, without limitation, those listed in Schedule 15(a) annexed to the Perfection Certificate, together with any and all (i) rights and privileges arising under applicable law with respect to such Issuer's use of any such patents (ii) inventions and improvements described and claimed therein, (iii) reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (iv) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable thereunder and with respect thereto including, without limitation, damages and payments for past, present or future infringements thereof, (v) rights corresponding thereto throughout the world and (vi) rights to sue for past, present or future infringements thereof

"Perfection Certificate ' shall mean that certain Perfection Certificate dated May 12, 2003, executed and delivered by each Issuer in favor of the Collateral Agent and each other Perfection Certificate (which shall be in form and substance reasonably acceptable to the Collateral Agent), executed and delivered by an Issuer in favor of the Collateral Agent for the benefit of the Secured Parties contemporaneously with the execution and delivery of each Joinder Agreement executed in accordance with Section 3 5 hereof, in each case, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time upon the request of the Collateral Agent

"Permitted Collateral Liens" shall have the meaning assigned to such term in Section 4 3 hereof

' Pledged Collateral" shall have the meaning set forth in Section 2 1

"Pledged Interests" shall mean, collectively, the Initial Pledged Interests and the Additional Pledged Interests provided, however, that to the extent applicable such Issuer shall not be required to pledge (i) any interest possessing more than 65% of the voting power or control of all classes of interests entitled to vote of any Subsidiary which is a first-tier controlled foreign corporation (as defined in Section 957(a) of the Tax Code) or (ii) the interests of any Subsidiary otherwise required to be pledged pursuant to this Agreement to the extent that such

pledge would constitute an investment of earnings in United States property under Section 956 (or a successor provision) of the Tax Code, which investment would trigger an increase in the gross income of a United States shareholder of such Subsidiary pursuant to Section 951 (or a successor provision) of the Tax Code.

"Pledged Securities" shall mean, collectively the Pledged Interests, the Pledged Shares and the Successor Interests

"Pledged Shares" shall mean, collectively, the Initial Pledged Shares and the Additional Pledged Shares, provided, however that each Issuer shall not be required to pledge (i) shares possessing more than 65% of the voting power of all classes of capital stock entitled to vote of any Subsidiary which is a first tier controlled foreign corporation (as defined in Section 957(a) of the Tax Code) or (ii) the shares of stock of any Subsidiary otherwise required to be pledged pursuant to this Agreement to the extent that such pledge would constitute an investment of earnings in United States property under Section 956 (or a successor provision) of the Tax Code, which investment would trigger an increase in the gross income of a United States shareholder of such Subsidiary pursuant to Section 951 (or a successor provision) of the Tax Code

"Preferred Stock Purchase Agreement" shall have the meaning assigned to such term in Recital B hereof

"Preferred Stock" shall have the meaning assigned to such term in Recital B hereof

"Prior Liens' shall mean, collectively, the Liens identified in Schedules 1.1(a) and 1.1(b) attached hereto relating to the items of Collateral identified in such Schedules

"Product Registrations" shall mean the NDAs (including any Marketing Authorization Approvals) and comparable regulatory filings and approvals for the Products held in an Issuer's name

"Products" shall mean Vaniqa, Bactrim, Ortho-Est, Synalgos, Equagesic, and any future pharmaceutical products (excluding the Special Property) acquired by the Company

' Prudent Operator" shall mean the standard of care taken by a prudent operator of property and assets similar in use and configuration to the Collateral, as the case may be and located in the locality where the Collateral, as the case may be, is located

"Purchase Agreements" shall have the meaning assigned to such term in Recital B hereof

Regulatory Documentation' shall mean all (a) regulatory filings and supporting documents, chemistry, manufacturing and controls data and documentation, preclinical and clinical studies and tests (b) records maintained under record keeping or reporting requirements of the FDA, or any other Governmental Authority including without limitation the drug master file and Investigational New Drug application, and (c) the complete complaint, adverse event and

medical inquiry filings with respect to the Products in each case held in such Issuer's name and in each case exclusively related to the Business, including the Product Registrations

'Requirements of Law shall mean, collectively, any and all requirements of any Governmental Authority including, without limitation any and all laws, ordinances rules, regulations or similar statutes or case law

"Second Lien Collateral' shall mean all rights and interests held by the Company related to Synalgos, Wygesic and Fquagesic

' Secured Obligations shall mean all obligations (whether or not constituting future advances, obligatory or otherwise) of each Issuer from time to time arising under or in respect of this Agreement, the Purchase Agreements, the Securities, the Preferred Stock, the Certificate of Designation, the Guarantee Agreement and the other Security Documents (including, without limitation, the obligations to pay principal, interest and all other charges, fees, expenses, commissions, reimbursements, premiums indemnities and other payments related to or in respect of the obligations contained in this Agreement, the Purchase Agreements, the Securities, the Preferred Stock, the Certificate of Designation and the other Security Documents), in each case whether (i) such obligations are direct or indirect, secured or unsecured, joint or several, absolute or contingent due or to become due whether at stated maturity by acceleration or otherwise, (ii) arising in the regular course of business or otherwise, (iii) for payment or performance and/or (iv) now existing or hereafter arising (including, without limitation, interest and other obligations arising or accruing after the commencement of any bankruptcy, insolvency, reorganization or similar proceeding with respect to such Issuer or any other Person, or which would have arisen or accrued but for the commencement of such proceeding, even if such obligation or the claim therefor is not enforceable or allowable in such proceeding)

Secured Parties" shall mean, collectively, the Collateral Agent and the holders of the Securities and the Preferred Stock

'Securities" shall have the meaning assigned to such term in Recital A hereof

"Securities Collateral" shall mean, collectively the Pledged Securities, the Intercompany Note, and the Distributions

"Securities Purchase Agreement' shall have the meaning assigned to such term in Recital A hereof

' Security Documents' means this Agreement, the Perfection Certificate, and each other security document or pledge agreement required by applicable law to grant a valid, perfected Lien on and security interest in the Collateral, and all UCC or other financing statements or instruments of perfection required by this Agreement and the Acquisition Documents and any other document or instrument utilized to pledge any Property of whatever kind or nature as collateral for the Debt

Special Property' shall mean

(a) any contract, permit, lease or license held by any Issuer that validly prohibits or restricts the creation by such Issuer of a security interest therein,

(b) any permit, lease or license held by any Issuer to the extent that any Requirement of Law applicable thereto prohibits the creation of a security interest therein,

(c) Equipment owned by any Issuer on the date hereof or hereafter acquired that is subject to a Lien securing a Purchase Money Indebtedness or Capitalized Lease Obligations permitted to be incurred pursuant to the provisions of the Purchase Agreements if the contract or other agreement in which such Lien is granted (or the documentation providing for such Purchase Money Indebtedness or Capitalized Lease Obligation) validly prohibits the creation of any other Lien on such Equipment,

(d) any property that on the date hereof is subject to a valid and enforceable "negative pledge clause" or other agreement that prohibits the grant of a security interest therein, and

(e) all rights and interests held exclusively in Esclim and/or Midrin

provided, however, that in each case described in clauses (a), (b) and (c) of this definition, such property shall constitute "Special Property" only to the extent and for so long as such permit, lease, license, contract or other agreement or Requirement of Law applicable thereto, validly prohibits the creation of a Lien on such property in favor of the Collateral Agent and, upon the termination of such prohibition (howsoever occurring), such property shall cease to constitute "Special Property"

"Subordinated Liens ' shall have the meaning assigned to such term in Section 4 3 hereof

' Successor Interests" shall mean, collectively, with respect to each Issuer, all shares of each class of the capital stock of the successor corporation or interests or certificates of the successor limited liability company, partnership or other entity owned by such Issuer (unless such successor is the Issuer itself) formed by or resulting from any consolidation or merger in which any Person listed in Schedule 1(a) annexed to the Perfection Certificate is not the surviving entity, provided, however, that the pledge of the Successor Interests affected hereby shall in no event affect the obligations of each Issuer under any provision prohibiting such action hereunder or under the Purchase Agreements

Synalgos shall mean the pharmaceutical product sold under the name Synalgos® and containing drocode (digydrocodeine) bitartrate, aspirin and caffeine, in all current and future presentations and formulations

Taking' shall mean any taking of the Collateral or any portion thereof in or by condemnation or other eminent domain proceedings pursuant to any law, general or special, or

by reason of the temporary requisition of the use of the Collateral or any portion thereof, by any Governmental Authority, civil or military

'Tax Code" shall mean the Internal Revenue Code of 1986 as amended from time to time

'Trade Dress" shall mean the trade dress and packaging, including without limitation the registered trade dress held in any Issuer s name and in exclusively used in the Business

'Trademarks' shall mean collectively, with respect to each Issuer, all trademarks (including service marks), logos, slogans, logos, certification marks, trade dress, uniform resource locations (URL's), domain names, corporate names and trade names, whether registered or unregistered, owned by or assigned to such Issuer relating to the Collateral and all registrations and applications for the foregoing (whether statutory or common law and whether established or registered in the United States or any other Country or any political subdivision thereof), including, without limitation, the registrations and applications listed in Schedule 15(a) annexed to the Perfection Certificate, together with any and all (i) rights and privileges arising under applicable law with respect to such Issuer's use of any such trademarks, (ii) reissues, continuations, extensions and renewals thereof, (iii) income, fees, royalties, damages and payments now and hereafter due and/or payable thereunder and with respect thereto, including, without limitation, damages, claims and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present and future infringements thereof

"UCC' shall mean the Uniform Commercial Code as in effect on the date hereof in the State of New York, provided, however that if by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the Collateral Agent s and the Secured Parties' security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect on the date hereof in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions relating to such provisions

"Vaniqa' shall mean VANIQA™ (eflornithine hydrochloride) Cream 13 9%, in all current and future presentations and formulations

"Vaniqa Collateral" shall have the meaning set forth in Section 2 3

Wygesic' shall mean the product having the ingredients (propoxyphene HCl and acetaminophen) and sold under the Wygesic trademark, in all current and future presentations and formulations

'Wyeth" shall mean Wyeth, a Delaware corporation

Wyeth Consent shall mean Wyeth's written consent, delivered to the Company, consenting to the granting of a security interest in the Second Lien Collateral by the Issuers to the Collateral Agent for the benefit of the holders of the Securities

SECTION 1 2 Interpretation The rules of construction set forth in Paragraph 10 of the Securities Purchase Agreements shall be applicable to this Agreement

SECTION 1 3 Resolution of Drafting Ambiguities Each Issuer acknowledges and agrees that it was represented by counsel in connection with the execution and delivery hereof that it and its counsel reviewed and participated in the preparation and negotiation hereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (i e , the Collateral Agent) shall not be employed in the interpretation hereof

ARTICLE II

GRANT OF SECURITY AND SECURED OBLIGATIONS

SECTION 2 1 First Priority Security Interest As collateral security for the payment and performance in full of all the Secured Obligations relating to the Securities, each Issuer hereby pledges and grants to the Collateral Agent for its benefit and for the benefit of the holders of the Securities, a first priority lien on and security interest in and to all of the right, title and interest of such Issuer in, to and under the following property, wherever located, whether now existing or hereafter arising or acquired from time to time (collectively, the "Pledged Collateral")

(i) all Accounts,

(ii) all Equipment, Goods, Inventory and Fixtures,

(iii) all Documents, Instruments and Chattel Paper,

(iv) all Letter-of Credit Rights

(v) all Securities Collateral,

(vi) all Investment Property,

(vii) all Intellectual Property Collateral

(viii) the Commercial Tort Claims described on Schedule 16 to the Perfection Certificate

(ix) the Acquisition Documents and the Acquisition Document Rights,

(x) all General Intangibles

(xi) all Deposit Accounts

(xii) all Supporting Obligations,

(xiii) all books and records,

(xiv) all Marketing Materials,

(xv) all Regulatory Documentation,

(xvi) to the extent not covered by clauses (i) through (xv) of this sentence, all other personal property of such Issuer whether tangible or intangible and

(xvii) all Proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and profits and products of, each of the foregoing, any and all proceeds of any insurance indemnity, warranty or guaranty payable to such Issuer from time to time with respect to any of the foregoing

Notwithstanding anything to the contrary contained in clauses (i) through (xvii) above, the security interests created by this Agreement shall not extend to any Excluded Property, and the term "Pledged Collateral" shall not include any Excluded Property or any Second Lien Collateral and (i) each Issuer shall from time to time at the request of the Collateral Agent give written notice to the Collateral Agent identifying in reasonable detail the Special Property (and stating in such notice that such Special Property constitutes "Excluded Property") and shall provide to the Collateral Agent such other information regarding the Special Property as the Collateral Agent may reasonably request and (ii) from and after the Date of Closing, no Issuer shall permit to become effective in any document creating, governing or providing for any perm t, lease or license, a provision that would prohibit the creation of a Lien on such permit, lease or license in favor of the Collateral Agent unless such Issuer believes, in its reasonable judgment, that such prohibition is usual and customary in transactions of such type

SECTION 2 2 Second Priority Security Interest Subject to the last paragraph of this Section 2 2, as collateral security for the payment and performance in full of all the Secured Obligations relating to the Securities, each Issuer hereby pledges and grants to the Collateral Agent for its benefit and for the benefit of the holders of the Securities a second priority lien (subject only to the existing liens held by Wyeth in the Second Lien Collateral) on and security interest in and to all of the right, title and interest of such Issuer in to and under the Second Lien Collateral wherever located, whether now existing or hereafter arising or acquired from time to time, which Second Lien Collateral includes, but is not limited to

(i) all Intellectual Property Collateral exclusively related to or used only in connection with the Second Lien Collateral

(ii) the Commercial Tort Claims described on Schedule 16 to the Perfection Certificate exclusively related to or used only in connection with the Second Lien Collateral,

(iii) all General Intangibles exclusively related to or used only in connection with the Second Lien Collateral,

(iv) all books and records exclusively related to or used only in connection with the Second Lien Collateral

(v) all Marketing Materials exclusively related to or used only in connection with the Second Lien Collateral

(vi) all Regulatory Documentation exclusively related to or used only in connection with the Second Lien Collateral,

(vii) to the extent not covered by clauses (i) through (vi) of this sentence all other personal property of such Issuer exclusively related to or used only in connection with the Second Lien Collateral, whether tangible or intangible and

(viii) all Proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and profits and products of, each of the foregoing, any and all proceeds of any insurance, indemnity, warranty or guaranty payable to such Issuer from time to time with respect to any of the foregoing

Notwithstanding anything to the contrary contained in clauses (i) through (viii) above, the security interests created by this Agreement shall not extend to any Excluded Property, and the term "Second Lien Collateral" shall not include any Excluded Property or any Pledged Collateral and (i) each Issuer shall from time to time at the request of the Collateral Agent give written notice to the Collateral Agent identifying in reasonable detail the Special Property (and stating in such notice that such Special Property constitutes Excluded Property ') and shall provide to the Collateral Agent such other information regarding the Special Property as the Collateral Agent may reasonably request and (ii) from and after the Date of Closing, no Issuer shall permit to become effective in any document creating, governing or providing for any permit, lease or license, a provision that would prohibit the creation of a Lien on such permit, lease or license in favor of the Collateral Agent unless such Issuer believes, in its reasonable judgment, that such prohibition is usual and customary in transactions of such type

Notwithstanding anything herein to the contrary, no Issuer shall be obligated to grant a security interest or take any related action with respect to the Second Lien Collateral until the Company receives the Wyeth Consent, which consent the Company will use its best efforts to obtain Upon receipt of the Wyeth Consent, all provisions hereof shall be operative with no further action taken by the parties hereto

SECTION 2 3 Preferred Stock Second Priority Security Interest As collateral security for the payment and performance in full of all the Secured Obligations relating to the Preferred Stock, each Issuer hereby pledges and grants to the Collateral Agent for its benefit and for the benefit of the holders of the Preferred Stock a second priority lien on and security interest in and to all of the right, title and interest of such Issuer in, to and under the Pledged Collateral to the extent, and only to the extent it relates exclusively to Vaniqa, wherever located whether now existing or hereafter arising or acquired from time to time (collectively, the "Vaniqa Collateral")

(i) all Accounts relating exclusively to Vaniqa

(ii) all Equipment Goods, Inventory and Fixtures relating exclusively to Vaniqa

(iii) all Documents, Instruments and Chattel Paper relating exclusively to Vaniqa,

(iv) all Intellectual Property Collateral relating exclusively to Vaniqa

(v) the Commercial Tort Claims described on Schedule 16 to the Perfection Certificate relating exclusively to Vaniqa,

(vi) all General Intangibles relating exclusively to Vaniqa (including, without limitation, rights arising under common law, statutes, or regulations, new drug applications and modifications thereof),

(vii) the Acquisition Documents and Acquisition Document Rights

(viii) all books and records relating exclusively to Vaniqa,

(ix) all Marketing Materials relating exclusively to Vaniqa

(x) all Regulatory Documentation relating exclusively to Vaniqa,

(xi) to the extent not covered by clauses (i) through (x) of this sentence, all other personal property of such Issuer relating exclusively to Vaniqa, whether tangible or intangible, and

(xii) all Proceeds and products of each of the foregoing and all accessions to substitutions and replacements for and profits and products of, each of the foregoing any and all proceeds of any insurance, indemnity warranty or guaranty payable to such Issuer from time to time with respect to any of the foregoing

Notwithstanding anything to the contrary contained in clauses (i) through (xii) above the security interests created by this Agreement shall not extend to any Excluded Property, and the term Vaniqa Collateral shall not include any Excluded Property any other

Pledged Collateral or any Second Lien Collateral and (i) each Issuer shall from time to time at the request of the Collateral Agent give written notice to the Collateral Agent identifying in reasonable detail the Special Property (and stating in such notice that such Special Property constitutes 'Excluded Property') and shall provide to the Collateral Agent such other information regarding the Special Property as the Collateral Agent may reasonably request and (ii) from and after the Date of Closing no Issuer shall permit to become effective in any document creating, governing or providing for any permit lease or license a provision that would prohibit the creation of a Lien on such permit, lease or license in favor of the Collateral Agent unless such Issuer believes in its reasonable judgment, that such prohibition is usual and customary in transactions of such type Notwithstanding the foregoing, (i) no representation or warranty is made by any Issuer in this Agreement, with respect to the validity or enforceability of this Section 2 3 with respect to the rights if any of the Secured Parties under this Section 2 3 including with respect the creation or perfection of a security interest, and the relative priority of any such security interest, or the effect of the federal Bankruptcy Code and comparable provisions of state law, and other applicable antifraud laws, securities laws, usury laws or public policy considerations on the rights if any, of the Secured Parties under this Section 2 3, and (ii) no Issuer shall be held accountable for any failure to create, perfect or maintain a security interest pursuant to this Section 2 3 by reason of the foregoing, however, provided further, no Issuer shall, and shall not permit any of its subsidiaries to, directly or indirectly, challenge the enforceability, validity or perfection of the security interest created pursuant to this Section 2 3 for the benefit of the Collateral Agent for the benefit of the Secured Parties, or their transferees or assigns, on the Collateral, except in the context of (i) any derivative actions brought on behalf of such Issuer and (ii) proceedings under the Federal Bankruptcy Code or similar state proceedings, to the extent required by law

SECTION 2 4 INTENTIONALLY OMITTED

SECTION 2 5 Security Interests (a) Each Issuer hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction any initial financing statements (including fixture filings) and amendments thereto that contain the information required by Article 9 of the Uniform Commercial Code of each applicable jurisdiction for the filing of any financing statement or amendment relating to the Collateral, including, without limitation, whether such Issuer is an organization, the type of organization and any organizational identification number issued to such Issuer Each Issuer agrees to provide all information described in the immediately preceding sentence to the Collateral Agent promptly upon request

(b) Each Issuer hereby ratifies its authorization for the Collateral Agent to file in any relevant jurisdiction any initial financing statements or amendments thereto relating to the Collateral if filed prior to the date hereof

(c) Each Issuer hereby further authorizes the Collateral Agent to file filings with the United States Patent and Trademark Office or United States Copyright Office (or any successor office or any similar office in any other country) or other documents for the purpose of perfecting confirming continuing, enforcing or protecting the security interests granted by such

Issuer hereunder, without the signature of such Issuer and naming such Issuer, as debtor, and the Collateral Agent as secured party

(d) Collateral Agent hereby agrees not to deliver to any bank, securities intermediary or other applicable financial institution any notice of sole control or entitlement order with respect to any Deposit Account or Securities Account governed by any Control Agreement unless an Event of Default has occurred and is continuing With respect to the financing statements filed by the Collateral Agent with respect to the security interests granted pursuant to Sections 2 1 and 2 2 of this Agreement, each Issuer authorizes such financing statements to provide that they cover "all assets" or "all personal property" in accordance with Section 9-504 of the New York UCC

SECTION 2 6 No Release Nothing set forth in this Agreement shall relieve such Issuer from the performance of any term, covenant, condition or agreement on such Issuer's part to be performed or observed under or in respect of any of the Collateral or from any liability to any Person under or in respect of any of the Collateral or shall impose any obligation on the Collateral Agent or any other Secured Party to perform or observe any such term, covenant, condition or agreement on such Issuer's part to be so performed or observed or shall impose any liability on the Collateral Agent or any other Secured Party for any act or omission on the part of such Issuer relating thereto or for any breach of any representation or warranty on the part of such Issuer contained in this Agreement, the Purchase Agreements, the Securities, the Preferred Stock or the other Security Documents, or under or in respect of the Collateral or made in connection herewith or therewith The obligations of each Issuer contained in this Section 2 6 shall survive the termination hereof and the discharge of each Issuer's other obligations under this Agreement and the Purchase Agreements, the Securities, the Preferred Stock, the Certificate of Designation and the other Security Documents

ARTICLE III

PERFECTION, SUPPLEMENTS, FURTHER ASSURANCES USE OF COLLATERAL

SECTION 3 1 Delivery of Certificated Securities Collateral All certificates agreements or instruments representing or evidencing the Securities Collateral in existence on the date hereof have been delivered to the Collateral Agent in suitable form for transfer by delivery or accompanied by duly executed instruments of transfer or assignment in blank Each Issuer hereby agrees that all certificates, agreements or instruments representing or evidencing Securities Collateral acquired by such Issuer after the date hereof, shall immediately upon receipt thereof by such Issuer be delivered to and held by or on behalf of the Collateral Agent pursuant hereto All certificated Securities Collateral shall be in suitable form for transfer by delivery or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance reasonably satisfactory to the Collateral Agent The Collateral Agent shall have the right, at any time upon the occurrence and during the continuance of any Event of Default, to endorse assign or otherwise transfer to or to register in the name of the Collateral Agent

or any of its nominees or endorse for negotiation any or all of the Securities Collateral without any indication that such Securities Collateral is subject to the security interest hereunder In addition, the Collateral Agent shall have the right at any time to exchange certificates representing or evidencing Securities Collateral for certificates of smaller or larger denominations

SECTION 3 2 Perfection of Uncertificated Securities Collateral Each Issuer represents and warrants that upon the filing of the financing statements listed on Schedule 6 of the Perfection Certificate the Collateral Agent has a perfected first priority security interest in all uncertificated Pledged Securities pledged by it hereunder that are in existence on the date hereof Each Issuer hereby agrees that if any issuer of Pledged Securities is organized in a jurisdiction which does not permit the use of certificates to evidence equity ownership, or if any of the Pledged Securities are at any time not evidenced by certificates of ownership, then such Issuer shall, to the extent permitted by applicable law, record such pledge on the equityholder register or books of the issuer, cause the issuer to execute and deliver to the Collateral Agent an acknowledgment of the pledge of such Pledged Securities substantially in the form of Exhibit 1 annexed hereto, execute any customary pledge forms or other documents necessary or appropriate to complete the pledge and give the Collateral Agent the right to transfer such Pledged Securities under the terms hereof and provide to the Collateral Agent an opinion of counsel, in form and substance reasonably satisfactory to the Collateral Agent, confirming such pledge and perfection thereof

SECTION 3 3 Financing Statements and Other Filings, Maintenance of Perfected Security Interest The only filings, registrations and recordings necessary and appropriate to create, preserve, protect, publish notice of and perfect the security interests granted by each Issuer to the Collateral Agent (for the benefit of the Secured Parties) pursuant to this Agreement in respect of the Collateral are listed in Schedule 7 of the Perfection Certificate All such filings, registrations and recordings have been delivered to the Collateral Agent in completed and, to the extent necessary or appropriate, duly executed form for filing in each governmental, municipal or other office specified in Schedule 7 of the Perfection Certificate and shall be filed, registered and recorded immediately after the date thereof Each Issuer agrees that at the sole cost and expense of the Issuers, (i) such Issuer will maintain the security interests created by this Agreement in the Collateral as perfected security interests having at least the priority required hereunder and shall defend such security interests against the claims and demands of all Persons, (ii) such Issuer will furnish to the Collateral Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent may reasonably request all in reasonable detail and (iii) at any time and from time to time, upon the written request of the Collateral Agent, such Issuer will promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further action as the Collateral Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including the filing of any financing or continuation statement under the UCC (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby and the execution and delivery of Control Agreements

SECTION 3 4 Other Actions In order to further insure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce the Collateral Agent's security interests in the Collateral, each Issuer agrees, in each case at such Issuer s own expense, to take the following actions with respect to the following Collateral

(a) Instruments and Tangible Chattel Paper As of the date hereof each Issuer hereby represents and warrants that no amount individually or in the aggregate in excess of $100,000 payable under or in connection with any of the Collateral is evidenced by any Instrument or Tangible Chattel Paper other than such Instruments and Tangible Chattel Paper listed in Schedule 13 of the Perfection Certificate If any amount individually or in the aggregate in excess of $100,000 payable under or in connection with any of the Collateral shall be evidenced by any Instrument or Tangible Chattel Paper the Issuer acquiring such Instrument or Tangible Chattel Paper shall forthwith endorse, assign and deliver the same to the Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time specify provided, however, that so long as no Event of Default shall have occurred and be continuing, the Collateral Agent shall return such Instrument or Tangible Chattel Paper to such Issuer from time to time, to the extent necessary for collection in the ordinary course of such Issuer's business

(b) Deposit Accounts Each Issuer hereby represents and warrants that (i) as of the date hereof, it has neither opened nor maintains any Deposit Accounts related to the Collateral other than the accounts listed in Schedule 17 of the Perfection Certificate, (ii) each Issuer, as applicable, will execute and deliver, as of the date hereof, a Control Agreement substantially in the form set forth in Exhibit 2(a) hereof (or in such other form and substance as is reasonably acceptable to the Collateral Agent) for the Deposit Accounts listed in Schedule 17 of the Perfection Certificate or close such account and (iii) as of the date each such Control Agreement shall be executed, the Collateral Agent will have a perfected first priority Security Interest in each Deposit Account listed in Schedule 17 of the Perfection Certificate by Control No Issuer shall hereafter establish and maintain any Deposit Account related to the Collateral unless (1) such Issuer shall have given the Collateral Agent 30 days' prior written notice of its intention to establish such new Deposit Account with a Bank (2) such Bank shall be reasonably acceptable to the Collateral Agent and (3) such Bank and such Issuer shall have duly executed and delivered to the Collateral Agent a Control Agreement with respect to such Deposit Account The Collateral Agent agrees with each Issuer that the Collateral Agent shall not give any instructions directing the disposition of funds from time to time credited to any Deposit Account related to the Collateral or withhold any withdrawal rights from each Issuer with respect to funds from time to time credited to any Deposit Account related to the Collateral unless an Event of Default has occurred and is continuing, or, after giving effect to any withdrawal that would occur The provisions of this Section 3 4(b) shall not apply to such Deposit Accounts related to the Collateral for which the Collateral Agent is the Bank No Issuer shall grant Control of any Deposit Account related to the Collateral to any Person other than the Collateral Agent

(c) Investment Property Each Issuer hereby represents and warrants that (i) as of the date hereof it has neither opened nor maintains any Securities Accounts or Commodity Accounts other than those listed in Schedule 17 of the Perfection Certificate, (ii) it will, on the Date of Closing, execute and deliver a Control Agreement substantially in the form set forth in Exhibit 2(b) hereto (or such other form and substance acceptable to the Collateral Agent) for each Securities Account or Commodity Account listed on Schedule 17 of the Perfection Certificate or close such account, (iii) as of the date each such Control Agreement is executed the Collateral Agent will have a perfected first priority security interest in such Securities Accounts and Commodity Accounts by Control and (iv) it does not hold, own or have any interest in any certificated securities or uncertificated securities other than those constituting Pledged Securities and those maintained in Securities Accounts or Commodity Accounts listed in Schedule 17 of the Perfection Certificate

(i) If any Issuer shall at any time hold or acquire any certificated securities constituting Investment Property, such Issuer shall immediately endorse, assign and deliver the same to the Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank, all in form and substance reasonably satisfactory to the Collateral Agent If any securities now or hereafter acquired by any Issuer constituting Investment Property are uncertificated and are issued to such Issuer or its nominee directly by the issuer thereof, such Issuer shall immediately notify the Collateral Agent thereof and pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent, either (a) cause the issuer to agree to comply with instructions from the Collateral Agent as to such securities, without further consent of such Issuer or such nominee, or (b) arrange for the Collateral Agent to become the registered owner of the securities No Issuer shall hereafter establish and maintain any Securities Account or Commodity Account with any Securities Intermediary or Commodity Intermediary unless (1) such Issuer shall have given the Collateral Agent 15 days' prior written notice of its intention to establish such new Securities Account or Commodity Account with such Securities Intermediary or Commodity Intermediary, (2) such Securities Intermediary or Commodity Intermediary shall be reasonably acceptable to the Collateral Agent and (3) such Securities Intermediary or Commodity Intermediary, as the case may be, and such Issuer shall have duly executed and delivered a Control Agreement with respect to such Securities Account or Commodity Account, as the case may be Each Issuer shall accept any cash and Investment Property in trust for the benefit of the Collateral Agent and within one (1) Business Day of actual receipt thereof, deposit any cash or Investment Property and any new securities, instruments, documents or other property by reason of ownership of the Investment Property (other than payments of a kind described in Section 7 5 hereof) received by it into a Controlled Account The Collateral Agent agrees with each Issuer that the Collateral Agent shall not give any instructions or directions to any issuer of uncertificated securities, Securities Intermediary or Commodity Intermediary and shall not withhold its consent to the exercise of any withdrawal or dealing rights by such Issuer, unless an Event of Default has occurred and is continuing, or, after giving effect to any such investment and withdrawal rights would occur Except for the provisions in the preceding sentence the provisions of this Section 3 4(c) shall not apply to any Fi-

nancial Assets credited to a Securities Account for which the Collateral Agent is the Securities Intermediary No Issuer shall grant control over any Investment Property to any Person other than the Collateral Agent

(ii) As between the Collateral Agent and the Issuers, the Issuers shall bear the investment risk with respect to the Investment Property and the risk of loss of, damage to, or the destruction of the Investment Property, whether in the possession of or maintained as a security entitlement or deposit by or subject to the control of, the Collateral Agent a Securities Intermediary, Commodity Intermediary, any Issuer or any other Person provided, however, that nothing contained in this Section 3 4(c) shall release or relieve any Securities Intermediary or Commodity Intermediary of its duties and obligations to any Issuer or any other Person under any Control Agreement or under applicable law Each Issuer shall promptly pay all Charges and fees of whatever kind or nature with respect to the Investment Property pledged by it under this Agreement In the event any Issuer shall fail to make such payment contemplated in the immediately preceding sentence the Collateral Agent may, but shall not be required to, do so for the account of such Issuer and such Issuer shall promptly reimburse and indemnify the Collateral Agent from all costs and expenses incurred by the Collateral Agent under this Section 3 4(c) in accordance with Section 11 4 hereof

(d) Electronic Chattel Paper and Transferable Records If any amount individually or in the aggregate in excess of $100,000 payable under or in connection with any of the Collateral shall be evidenced by any Electronic Chattel Paper or any "transferable record," as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, upon acquiring such Electronic Chattel Paper or transferable record the Issuer acquiring such Electronic Chattel Paper or transferable record shall promptly notify the Collateral Agent thereof and shall take such action as the Collateral Agent may reasonably request to vest in the Collateral Agent control under UCC Section 9-105 of such Electronic Chattel Paper or control under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record The Collateral Agent agrees with each Issuer that the Collateral Agent will arrange pursuant to procedures satisfactory to the Collateral Agent and so long as such procedures will not result in the Collateral Agent's loss of control, for the Issuer to make alterations to the Electronic Chattel Paper or transferable record permitted under UCC Section 9-105 or, as the case may be, Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act for a party in control to allow without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by such Issuer with respect to such Electronic Chattel Paper or transferable record

(e) Letter-of-Credit Rights If any Issuer is at any time a beneficiary under a Letter of Credit now or hereafter issued in favor of such Issuer in an amount individually

or in the aggregate in excess of $100,000, the Issuer shall promptly notify the Collateral Agent thereof and the Issuer shall, pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent, either (i) arrange for the issuer and any confirmer of such Letter of Credit to consent to an assignment to the Collateral Agent of the proceeds of any drawing under the Letter of Credit or (ii) arrange for the Collateral Agent to become the transferee beneficiary of such Letter of Credit, with the Collateral Agent agreeing in each case, that the proceeds of any drawing under the Letter of Credit are to be applied as provided in the Purchase Agreements

(f) Commercial Tort Claims As of the date hereof each Issuer hereby represents and warrants that it holds no Commercial Tort Claims related to the Collateral other than those listed in Schedule 16 of the Perfection Certificate If any Issuer shall at any time hold or acquire a Commercial Tort Claim related to the Collateral having a value individually or in the aggregate in excess of $100,000, such Issuer shall immediately notify the Collateral Agent in writing signed by the Issuer of the brief details thereof and grant to the Collateral Agent in such writing a security interest therein and in the Proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to the Collateral Agent

(g) Bailee Letters Each Issuer shall use its commercially reasonable efforts to obtain as soon as practicable after the date hereof with respect to each location listed in Schedule 2(d) annexed to the Perfection Certificate, where such Issuer maintains Collateral, a waiver of bailee's lien substantially in the form of Exhibit 3 annexed hereto (each a "Bailee Letter") and use commercially reasonable efforts to obtain a Bailee Letter from all such bailees who from time to time have possession of Collateral in the ordinary course of such Issuer's business

SECTION 3 5 Joinder of Additional Guarantors The Issuers shall cause each domestic Subsidiary of the Company to pledge its assets to the Collateral Agent for the benefit of the Secured Parties, and to execute and deliver to the Collateral Agent (i) an instrument in the form of Exhibit 5 hereto, and (ii) a Perfection Certificate, in each case, within 10 Business Days of the date on which it was acquired or created and, upon such execution and delivery, such Subsidiary shall constitute a 'Guarantor" and an "Issuer" for all purposes hereunder with the same force and effect as if originally named as a Guarantor and Issuer herein The execution and delivery of any such instrument shall not require the consent of any Issuer hereunder The rights and obligations of each Issuer hereunder shall remain in full force and effect notwithstanding the addition of any new Guarantor and Issuer as a party to this Agreement

SECTION 3 6 Use and Pledge of Collateral Unless an Event of Default shall have occurred and be continuing, the Collateral Agent shall from time to time execute and deliver, upon written request of any Issuer and at the sole cost and expense of such Issuer any and all instruments, certificates or other documents in a form reasonably requested by such Issuer, necessary or appropriate in the reasonable judgment of such Issuer to enable any Issuer to continue to exploit license, use, enjoy and protect the Collateral in accordance with the terms hereof and of the Purchase Agreements The Issuers and the Collateral Agent acknowledge that

this Agreement is intended to grant to the Collateral Agent for the benefit of the Secured Parties security interests in and Liens upon the Collateral and shall not constitute or create a present assignment of any of the Collateral

ARTICLE IV

REPRESENTATIONS WARRANTIES AND COVENANTS

Each Issuer represents, warrants and covenants as follows

SECTION 4.1 Title, Authority and Validity Preservation of Corporate Existence (i) Each Issuer (A) has good and valid rights in and title to the Collateral with respect to which it has purported to grant security interests and Liens hereunder (B) has full power and authority to grant to the Collateral Agent the security interests in and Liens on such Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person other than any consent or approval that has been obtained, (C) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (D) it is duly qualified to transact business and is in good standing in each state in which the Collateral is located and (E) this Agreement is a legal, valid and binding obligation of such Issuer, enforceable against such Issuer in accordance with its terms

(ii) Each Issuer shall (A) preserve and maintain in full force and effect its existence and good standing under the laws of the jurisdiction of its organization, (B) preserve and maintain in full force and effect its qualification to transact business and good standing in the state in which the Collateral is located and (C) preserve and maintain in full force and effect all consents, authorizations and approvals necessary or required of any Governmental Authority or any other Person relating to the execution, delivery and performance hereof

SECTION 4.2 Validity of Security Interests The security interests in and Liens on the Collateral granted to the Collateral Agent for the benefit of the Secured Parties hereunder constitutes (a) legal and valid security interests in all the Collateral securing the payment and performance of the Secured Obligations, and (b) subject to the filings described in Schedule 7 of the Perfection Certificate, perfected security interests in all the Collateral Subject to Section 2.3 of this Agreement, the security interests and Liens granted to the Collateral Agent for the benefit of the Secured Parties pursuant to this Agreement in and on the Collateral will at all times constitute perfected, continuing first and second priority security interests therein, superior and prior to the rights of all other Persons therein other than in the case of any Collateral with respect to the holders of Permitted Collateral Liens

SECTION 4.3 Limitation on Liens Each Issuer is as of the date hereof, and as to Collateral acquired by it from time to time after the date hereof, each Issuer will be the sole direct and beneficial owner or licensee of all Collateral pledged by it hereunder free from any Lien or other right, title or interest of any Person other than (i) Prior Liens (ii) the Lien and secu-

rity interests created by this Agreement, (iii) Contested Liens and (iv) the Liens described in Paragraph 6F of the Securities Purchase Agreement (the Liens described in clauses (i) through (iv) of this sentence, collectively, "Permitted Collateral Liens") Each Issuer shall, at its own cost and expense, defend title to the Collateral pledged by it hereunder and the security interests therein and Liens thereon granted to the Collateral Agent and the priority thereof against all claims and demands of all Persons, at its own cost and expense at any time claiming any interest therein adverse to the Collateral Agent or any other Secured Party There is no agreement and no Issuer shall enter into any agreement or take any other action, that would result in the imposition of any other Lien, restrict the transferability of any of the Collateral or otherwise impair or conflict with such Issuer's obligations or the rights of the Collateral Agent hereunder, provided, that if the obligations under the Securities shall no longer be outstanding (whether by maturity, redemption or otherwise), each Issuer may, upon notice to the Collateral Agent, grant a Lien in the Collateral to a third-party that is subordinated to the Liens granted under this Agreement ("Subordinated Liens")

SECTION 4 4 Other Financing Statements There is no (nor will there be any) valid or effective financing statement (or similar statement or instrument of registration under the law of any jurisdiction) covering or purporting to cover any interest of any kind in the Collateral other than in the case of Collateral financing statements relating to Permitted Collateral Liens So long as any of the Secured Obligations remain unpaid, no Issuer shall execute authorize or permit to be filed in any public office any financing statement (or similar statement or instrument of registration under the law of any jurisdiction) or statements relating to any Collateral, except, in the case of any Collateral, financing statements filed or to be filed in respect of and covering the security interests granted by such Issuer to the holders of the Permitted Collateral Liens and Subordinated Liens

SECTION 4 5 Chief Executive Office Change of Name, Jurisdiction of Organization (a) The exact legal name, type of organization, jurisdiction of organization, Federal Taxpayer Identification Number, organizational identification number and chief executive office of each Issuer is indicated next to its name in Schedules 1(a) and 2(a) of the Perfection Certificate No Issuer shall change (i) its corporate name, (ii) the location of its chief executive office, its principal place of business, any office in which it maintains books or records relating to Collateral owned by it or any office or facility at which Collateral owned by it is located (including the establishment of any such new office or facility), (iii) its identity or type of organization or corporate structure, (iv) its Federal Taxpayer Identification Number or organizational identification number or (v) its jurisdiction of organization (in each case, including, without limitation, by merging with or into any other entity, reorganizing, dissolving, liquidating, reincorporating or incorporating in any other jurisdiction) until (A) it shall have given the Collateral Agent not less than 30 days' prior written notice (in the form of an Officers' Certificate) of its intention so to do, clearly describing such change and providing such other information in connection therewith as the Collateral Agent may reasonably request and (B) with respect to such change, such Issuer shall have taken all action reasonably satisfactory to the Collateral Agent to maintain the perfection and priority of the security interests of the Collateral Agent for the benefit of the Secured Parties in the Collateral intended to be granted hereunder including, without limitation, using commercially reasonable efforts to obtain waivers of landlord's or warehousemen s liens with

respect to such new location, if applicable Each Issuer agrees to promptly provide the Collateral Agent with certified organizational documents reflecting any of the changes described in the preceding sentence

(b) The Collateral Agent may rely on opinions of counsel as to whether any or all UCC financing statements of each Issuer need to be amended as a result of any of the changes described in Section 4 5(a) If any Issuer fails to provide information to the Collateral Agent about such changes on a timely basis the Collateral Agent shall not be liable or responsible to any party for any failure to maintain perfected security interests in such Issuer's property constituting Collateral, for which the Collateral Agent needed to have information relating to such changes The Collateral Agent shall have no duty to inquire about such changes if any Issuer does not inform the Collateral Agent of such changes, the parties acknowledging and agreeing that it would not be feasible or practical for the Collateral Agent to search for information on such changes if such information is not provided by any Issuer

SECTION 4 6 Location of Inventory and Equipment All Equipment and Inventory constituting Collateral of each Issuer is located at the chief executive office or such other location listed in Schedules 2(a) 2(b), 2(c), 2(d) or 2(e) of the Perfection Certificate No Issuer shall move any Equipment or Inventory exclusively related to the Collateral to any location other than one within the Continental United States that is listed in such Schedules of the Perfection Certificate with respect to such Issuer until (i) it shall have given the Collateral Agent not less than 30 days' prior written notice (in the form of an Officers' Certificate) of its intention so to do, clearly describing such new location within the Continental United States and providing such other information in connection therewith as the Collateral Agent may request and (ii) with respect to such new location, each Issuer shall have taken all action reasonably satisfactory to the Collateral Agent to maintain the perfection and priority of the security interests of the Collateral Agent for the benefit of the Secured Parties in the Collateral intended to be granted hereby, including, without limitation, using commercially reasonable efforts to obtain waivers of landlord s or warehouseman's liens with respect to such new location, if applicable

SECTION 4 7 Condition and Maintenance of Equipment The Equipment constituting Collateral of each Issuer is in good repair, working order and condition, reasonable wear and tear excepted Each Issuer shall cause any Equipment acquired exclusively in connection with the Collateral to be maintained and preserved in good repair, working order and condition, reasonable wear and tear excepted, and shall as quickly as commercially practicable make or cause to be made all repairs, replacements and other improvements which are necessary or appropriate in the conduct of such Issuer's business

SECTION 4 8 Corporate Names, Prior Transactions No Issuer has, during the past five years, been known by or used any other corporate or fictitious name or been a party to any merger or consolidation or acquired all or substantially all of the assets of any Person, or acquired any of its property or assets out of the ordinary course of business except as set forth in Schedules 1(b), 1(c) and 4 of the Perfection Certificate

SECTION 4 9 No Claims Each Issuer owns or has rights to use all of the Collateral pledged by it hereunder and all rights with respect to any of the foregoing used in

necessary for or material to such Issuer s business as currently conducted The use by such Issuer of such Collateral and all such rights with respect to the foregoing do not infringe on the rights of any Person other than such infringement which would not, individually or in the aggregate, result in a Collateral Material Adverse Effect No claim has been made and remains outstanding that any Issuer's use of any Collateral does or may violate the rights of any third Person that would individually, or in the aggregate, have a Collateral Material Adverse Effect

SECTION 4 10 No Conflicts Consents etc Neither the execution and delivery hereof by each Issuer nor the consummation of the transactions herein contemplated nor the fulfillment of the terms hereof (i) violates any Operative Agreement of any Issuer, (ii) violates the terms of any agreement, indenture, mortgage, deed of trust, equipment lease, instrument or other document to which any Issuer is a party, or by which it may be bound or to which any of its properties or assets may be subject, which violation would, individually or in the aggregate, have a Collateral Material Adverse Effect, (iii) conflicts with any Requirement of Law applicable to any Issuer or its property, which conflict would, individually or in the aggregate, have a Collateral Material Adverse Effect, or (iv) results in or requires the creation or imposition of any Lien (other than the Liens contemplated hereby) upon or with respect to any of the property now owned or hereafter acquired by any Issuer No consent of any party (including, without limitation, equityholders or creditors of any Issuer) and no consent, authorization, approval, license or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or other Person is required (A) for the pledge by each Issuer of the Collateral pledged by it pursuant to this Agreement or for the execution, delivery or performance hereof by each Issuer, except as set forth in Schedule 4 10 attached hereto, (B) for the exercise by the Collateral Agent of the rights provided for in this Agreement or (C) for the exercise by the Collateral Agent of the remedies in respect of the Collateral pursuant to this Agreement In the event that the Collateral Agent desires to exercise any remedies, rights and powers set forth in this Agreement and determines it necessary to obtain any approvals or consents of any Governmental Authority or any other Person therefor, then, upon the reasonable request of the Collateral Agent, each Issuer agrees to use its best efforts to assist and aid the Collateral Agent to obtain as soon as practicable any necessary approvals or consents for the exercise of any such remedies, rights and powers

SECTION 4 11 Collateral All information set forth herein, including the schedules attached hereto, and all information contained in any documents, schedules and lists heretofore delivered to any Secured Party in connection with this Agreement, in each case, relating to the Collateral, is accurate and complete in all material respects The Collateral described on the schedules attached hereto constitutes all of the property of such type of Collateral owned or held by any Issuer

SECTION 4 12 Insurance (a) Each Issuer at its own expense shall maintain or cause to be maintained the insurance policies and coverages required under Paragraph 5H of the Securities Purchase Agreement with respect to the Collateral

(b) If there shall occur any Destruction individually or in the aggregate, in excess of $100,000, each Issuer shall promptly send to the Collateral Agent a written notice setting forth the nature and extent of such Destruction If there shall occur any Taking, the applica-

ble Issuer shall immediately notify the Collateral Agent upon receiving notice of such Taking or commencement of proceedings therefor The Net Insurance Proceeds are hereby assigned and shall be paid to the Collateral Agent Each Issuer shall take all steps necessary to notify the condemning authority of such assignment All Net Insurance Proceeds shall be applied in accordance with the provisions of Paragraph 5H of the Securities Purchase Agreement

(c) In the event that the proceeds of any insurance claim are paid after the Collateral Agent has exercised its right to foreclose after an Event of Default such proceeds shall be paid to the Collateral Agent to satisfy any deficiency remaining after such foreclosure The Collateral Agent shall retain its interest in the Insurance Policies required to be maintained pursuant to this Agreement during any redemption period

SECTION 4 13 Payment of Taxes, Compliance with Laws, Contesting Liens Claims Each Issuer represents and warrants that all Charges imposed upon or assessed against the Collateral have been paid and discharged except to the extent such Charges constitute a Lien not yet due and payable or a Permitted Collateral Lien Each Issuer shall comply with all Requirements of Law applicable to the Collateral the failure to comply with which would, individually or in the aggregate, have a Collateral Material Adverse Effect Any Issuer may at its own expense contest the validity, amount or applicability of any Charges so long as the contest thereof shall be conducted in accordance with, and permitted pursuant to the provisions of, the Purchase Agreements Notwithstanding the foregoing provisions of this Section 4 13, (i) no contest of any such obligation may be pursued by any Issuer if such contest would expose the Collateral Agent or any other Secured Party to (A) any possible criminal liability or (B) any additional civil liability for failure to comply with such obligations unless such Issuer shall have furnished a bond or other security therefor satisfactory to the Collateral Agent, or such Secured Party, as the case may be, and (ii) if at any time payment or performance of any obligation contested by such Issuer pursuant to this Section 4 13 shall become necessary to prevent the imposition of remedies because of non-payment, such Issuer shall pay or perform the same, in sufficient time to prevent the imposition of remedies in respect of such default or prospective default

SECTION 4 14 Access to Collateral, Books and Records, Other Information Upon reasonable request and prior notice to the Issuers, the Collateral Agent, its agents, accountants and attorneys shall have full and free access to visit and inspect, as applicable, during normal business hours and such other reasonable times as may be requested by the Collateral Agent all of the Collateral including, without limitation, all of the books, correspondence and records of any Issuer relating thereto The Collateral Agent and its representatives may examine the same, take extracts therefrom and make photocopies thereof, and each Issuer agrees to render to the Collateral Agent at such Issuer's cost and expense, such clerical and other assistance as may be reasonably requested by the Collateral Agent with regard thereto Each Issuer shall, at any and all times, within a reasonable time after written request by the Collateral Agent, furnish or cause to be furnished to the Collateral Agent, in such manner and in such detail as may be reasonably requested by the Collateral Agent, additional information with respect to the Collateral

ARTICLE V

CERTAIN PROVISIONS CONCERNING SECURITIES COLLATERAL

SECTION 5.1 Pledge of Additional Securities Collateral. Each Issuer shall upon obtaining any Pledged Securities or Intercompany Notes of any person, accept the same in trust for the benefit of the Collateral Agent and forthwith deliver to the Collateral Agent a pledge amendment, duly executed by such Issuer, in substantially the form of Exhibit 4 annexed hereto (each, a "Pledge Amendment"), and the certificates and other documents required under Section 3.1 and Section 3.2 in respect of the additional Pledged Securities or Intercompany Notes which are to be pledged pursuant to this Agreement, and confirming the attachment of the Lien hereby created on and in respect of such additional Pledged Securities or Intercompany Notes. Each Issuer hereby authorizes the Collateral Agent to attach each Pledge Amendment to this Agreement and agrees that all Pledged Interests or Intercompany Notes listed on any Pledge Amendment delivered to the Collateral Agent shall for all purposes hereunder be considered Collateral.

SECTION 5.2 Voting Rights, Distributions, etc. (i) So long as no Event of Default shall have occurred and be continuing:

(A) Each Issuer shall be entitled to exercise any and all voting and other consensual rights pertaining to the Securities Collateral or any part thereof for any purpose not inconsistent with the terms or purposes hereof or any other document evidencing the Obligations; provided, however, that no Issuer shall in any event exercise such rights in any manner which may have a Collateral Material Adverse Effect.

(B) Each Issuer shall be entitled to receive and retain, and to utilize free and clear of the Lien hereof, any and all Distributions, provided, however, that any and all such Distributions consisting of rights or interests in the form of securities shall be forthwith delivered to the Collateral Agent to hold as Collateral and shall, if received by such Issuer, be received in trust for the benefit of the Collateral Agent, be segregated from the other property or funds of such Issuer and be forthwith delivered to the Collateral Agent as Collateral in the same form as so received (with any necessary endorsement).

(C) The Collateral Agent shall be deemed without further action or formality to have granted to each Issuer all necessary consents relating to voting rights and shall, if necessary, upon written request of any Issuer and at the sole cost and expense of such Issuer, from time to time execute and deliver (or cause to be executed and delivered) to such Issuer all such instruments as such Issuer may reasonably request in order to permit such Issuer to exercise the voting and other rights which it is entitled to exercise pursuant to Section 5.2(i)(A) hereof and to receive the Distributions which it is authorized to receive and retain pursuant to Section 5.2(i)(B) hereof.

(ii) Upon the occurrence and during the continuance of any Event of Default

(A) All rights of each Issuer to exercise the voting and other consensual rights it would otherwise be entitled to exercise pursuant to Section 5 2(i)(A) hereof without any further action shall cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall thereupon have the sole right to exercise such voting and other consensual rights

(B) All rights of each Issuer to receive Distributions which it would otherwise be authorized to receive and retain pursuant to Section 5 2(i)(B) hereof shall cease and all such rights shall thereupon become vested in the Collateral Agent, which shall thereupon have the sole right to receive and hold as Collateral such Distributions

(iii) Each Issuer shall, at its sole cost and expense, from time to time execute and deliver to the Collateral Agent appropriate instruments as the Collateral Agent may request in order to permit the Collateral Agent to exercise the voting and other rights which it may be entitled to exercise pursuant to Section 5 2(ii)(A) hereof and to receive all Distributions which it may be entitled to receive under Section 5 2(ii)(B) hereof

(iv) All Distributions which are received by any Issuer contrary to the provisions of Section 5 2(ii)(B) hereof shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other funds of such Issuer and shall immediately be paid over to the Collateral Agent as Collateral in the same form as so received (with any necessary endorsement)

SECTION 5 3 Operative Agreements Each Issuer has delivered to the Collateral Agent true, correct and complete copies of its Operative Agreements The Operative Agreements are in full force and effect, have not as of the date hereof been amended or modified except as disclosed to the Collateral Agent, and there is no existing default by any party thereunder or any event which, with the giving of notice of passage of time or both, would constitute a default by any party thereunder Each Issuer shall deliver to the Collateral Agent a copy of any notice of default given or received by it under any Operative Agreement within ten days after such Issuer gives or receives such notice No Issuer will terminate or agree to terminate any Operative Agreement or make any amendment or modification to any Operative Agreement which may have a Collateral Material Adverse Effect including electing to treat any Pledged Interests of such Issuer as a security under Section 8-103 of the UCC

SECTION 5 4 Defaults, etc No Issuer is in default in the payment of any portion of any mandatory capital contribution, if any, required to be made under any agreement to which such Issuer is a party relating to the Pledged Securities pledged by it, and no Issuer is in violation of any other provisions of any such agreement to which such Issuer is a party, or otherwise in default or violation thereunder No Securities Collateral pledged by any Issuer is subject to any defense, offset or counterclaim, nor have any of the foregoing been asserted or alleged against any Issuer by any Person with respect thereto, and as of the date hereof, there are no certificates, instruments, documents or other writings (other than the Operative Agreements and certificates if any delivered to the Collateral Agent) which evidence any Pledged Securities of any Issuer

ARTICLE VI

CERTAIN PROVISIONS CONCERNING INTELLECTUAL PROPERTY COLLATERAL

SECTION 6 1 Grant of License For the purpose of enabling the Collateral Agent, during the continuance of an Event of Default, to exercise rights and remedies under Article IX hereof at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Issuer hereby grants to the Collateral Agent, to the extent assignable, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to such Issuer) to use, assign, license or sublicense any of the Intellectual Property Collateral now owned or hereafter acquired by such Issuer, wherever the same may be located, including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout hereof

SECTION 6 2 Registrations Except pursuant to licenses and other user agreements entered into by any Issuer in the ordinary course of business that are listed in Schedules 15(a) and (b) annexed to the Perfection Certificate, on and as of the date hereof (i) each Issuer owns and possesses the right to use, and has done nothing to authorize or enable any other Person to use any Copyright, Patent or Trademark listed in Schedules 15(a) and (b) annexed to the Perfection Certificate, and (ii) to any Issuer's knowledge, all registrations listed in Schedules 15(a) and (b) annexed to the Perfection Certificate are valid and in full force and effect

SECTION 6 3 No Violations or Proceedings To any Issuer's knowledge, on and as of the date hereof, (i) except as set forth in Schedule 6 3 attached hereto, there is no material violation by others of any right of such Issuer with respect to any Copyright, Patent or Trademark listed in Schedules 15(a) and (b) annexed to the Perfection Certificate, respectively, pledged by it under the name of such Issuer, (ii) no Issuer is infringing upon any Copyright, Patent or Trademark of any other Person other than such infringement that, individually or in the aggregate, would not (or would not reasonably be expected to) result in a material adverse effect on the value or utility of the Intellectual Property Collateral or any portion thereof material to the use and operation of the Collateral and (iii) no proceedings have been instituted or are pending against any Issuer or to any Issuer knowledge, threatened, and no claim against any Issuer has been received by such Issuer, alleging any such violation, except as may be set forth in Schedule 6 3

SECTION 6 4 Protection of Collateral Agent s Security On a continuing basis, each Issuer shall, at its sole cost and expense, (i) promptly following its becoming aware thereof notify the Collateral Agent of (A) any materially adverse determination in any proceeding in the United States Patent and Trademark Office or the United States Copyright Office with respect to any material Patent Trademark or Copyright in relation to the Collateral or (B) the institution of any proceeding or any adverse determination in any Federal state or local court or administrative body regarding such Issuer s claim of ownership in or right to use any of the Intellectual Property Collateral material to the use and operation of the Collateral, its right to register

such Intellectual Property Collateral or its right to keep and maintain such registration in full force and effect (ii) to the extent permitted under the Acquisition Documents as in effect on the date hereof maintain and protect the Intellectual Property Collateral material to the use and operation ~~of the Collateral as presently used and operated~~ and as contemplated by the Purchase Agreements, (iii) to the extent permitted under the Acquisition Documents as in effect on the date hereof not permit to lapse or become abandoned any Intellectual Property Collateral material to the use and operation of the Collateral as presently used and operated and as contemplated by the Purchase Agreements, and not settle or compromise any pending or future litigation or administrative proceeding with respect to such Intellectual Property Collateral in each case except as shall be consistent with commercially reasonable business judgment, (iv) upon such Issuer obtaining knowledge thereof, promptly notify the Collateral Agent in writing of any event which may be reasonably expected to materially and adversely affect the value or utility of the Intellectual Property Collateral or any portion thereof material to the use and operation of the Collateral, the ability of such Issuer or the Collateral Agent to dispose of the Intellectual Property Collateral or any portion thereof or the rights and remedies of the Collateral Agent in relation thereto including, without limitation, a levy or threat of levy or any legal process against the Intellectual Property Collateral or any portion thereof, (v) not license the Intellectual Property Collateral other than licenses entered into by such Issuer in, or incidental to, the ordinary course of business, or amend or permit the amendment of any of the licenses in a manner that materially and adversely affects the right to receive payments thereunder, or in any manner that would materially impair the value of the Intellectual Property Collateral or the Liens on and security interests in the Intellectual Property Collateral intended to be granted to the Collateral Agent for the benefit of the Secured Parties, without the consent of the Collateral Agent, (vi) until the Collateral Agent exercises its rights to make collection, diligently keep adequate records respecting the Intellectual Property Collateral and (vii) furnish to the Collateral Agent from time to time upon the Collateral Agent's reasonable request therefor detailed statements and amended schedules further identifying and describing the Intellectual Property Collateral and such other materials evidencing or reports pertaining to the Intellectual Property Collateral as the Collateral Agent may from time to time request

SECTION 6 5 After-Acquired Property If any Issuer shall, at any time before the Secured Obligations have been paid in full (other than contingent indemnification obligations which, pursuant to the provisions of the Purchase Agreements or the collateral documents survive the termination thereof), (i) obtain any rights to any additional Intellectual Property Collateral or (ii) become entitled to the benefit of any additional Intellectual Property Collateral or any renewal or extension thereof, including any reissue, division, continuation, or continuation-in-part of any Intellectual Property Collateral, or any improvement on any Intellectual Property Collateral, the provisions hereof shall automatically apply thereto and any such item enumerated in clause (i) or (ii) of this Section 6 5 with respect to the Issuers shall automatically constitute Intellectual Property Collateral if such would have constituted Intellectual Property Collateral at the time of execution hereof and be subject to the Liens and security interests created by this Agreement without further action by any party Each Issuer shall promptly (x) provide to the Collateral Agent written notice of any of the foregoing and (y) confirm the attachment of the Liens and security interests created by this Agreement to any rights described in

clauses (x) and (y) of the immediately preceding sentence of this Section 6 5 by execution of an instrument in form reasonably acceptable to the Collateral Agent

SECTION 6 6 Modifications. Each Issuer authorizes the Collateral Agent to modify this Agreement by amending Schedules 15(a) and (b) annexed to the Perfection Certificate to include any Intellectual Property Collateral acquired or arising after the date hereof of such Issuer including, without limitation, any of the items listed in Section 6 5 hereof

SECTION 6 7 Litigation Unless there shall occur and be continuing any Event of Default, each Issuer shall have the right to commence and prosecute in its own name as the party in interest, for its own benefit and at the sole cost and expense of such Issuer, such applications for protection of the Intellectual Property Collateral and suits, proceedings or other actions to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value or other damage as are necessary to protect the Intellectual Property Collateral Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent shall have the right but shall in no way be obligated to file applications for protection of the Intellectual Property Collateral and/or bring suit in the name of each Issuer, the Collateral Agent or the Secured Parties to enforce the Intellectual Property Collateral and any license thereunder In the event of such suit, each Issuer shall, at the reasonable request of the Collateral Agent, do any and all lawful acts and execute any and all documents requested by the Collateral Agent in aid of such enforcement and such Issuer shall promptly reimburse and indemnify the Collateral Agent, as the case may be, for all costs and expenses incurred by the Collateral Agent in the exercise of its rights under this Section 6 7 in accordance with Section 11 3 hereof In the event that the Collateral Agent shall elect not to bring suit to enforce the Intellectual Property Collateral, each Issuer agrees, at the reasonable request of the Collateral Agent, to take all commercially reasonable actions necessary, whether by suit, proceeding or other action, to prevent the infringement, counterfeiting, unfair competition, dilution, diminutior in value of or other damage to any of the Intellectual Property Collateral by others and for that purpose agrees to diligently maintain any suit, proceeding or other action against any Person so infringing necessary to prevent such infringement

ARTICLE VII

CERTAIN PROVISIONS CONCERNING ACCOUNTS

SECTION 7 1 Special Representations and Warranties As of the time when each of its Accounts in relation to the Collateral arises, each Issuer shall be deemed to have represented and warranted that such Account and all records papers and documents relating thereto (i) are genuine and correct and in all material respects what they purport to be, (ii) represent the legal, valid and binding obligation of the account debtor, except as such enforceability may be limited by bankruptcy, insolvency, reorganization moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability, evidencing indebtedness unpaid and owed by such account debtor, arising out of the performance of labor or services or the sale, lease license, assignment or other disposition and delivery of the goods or

other property listed therein or out of an advance or a loan (iii) will, in the case of an Account relating to the Collateral, except for the original or duplicate original invoice sent to a purchaser evidencing such purchaser's account, be the only original writings evidencing and embodying ~~such obligation of the account debtor named therein~~ and (iv) are in all material respects in compliance and conform with all applicable Federal, state and local laws and applicable laws of any relevant foreign jurisdiction

SECTION 7 2 Maintenance of Records Each Issuer shall keep and maintain at its own cost and expense complete records of each Account in relation to the Collateral, in a manner consistent with prudent business practice, including, without limitation, records of all payments received all credits granted thereon, all merchandise returned and all other documentation relating thereto Each Issuer shall, at such Issuer's sole cost and expense, upon the Collateral Agent's demand made at any time after the occurrence and during the continuance of any Event of Default, deliver all tangible evidence of Accounts related to the Collateral, including, without limitation, all documents evidencing Accounts related to the Collateral and any books and records relating thereto to the Collateral Agent or to its representatives (copies of which evidence and books and records may be retained by such Issuer) Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent may transfer a full and complete copy of any Issuer s books, records, credit information, reports, memoranda and all other writings relating to the Accounts related to the Collateral to and for the use by any Person that has acquired or is contemplating acquisition of an interest in the Accounts related to the Collateral or the Collateral Agent's security interests therein without the consent of any Issuer

SECTION 7 3 Legend Each Issuer shall legend, at the request of the Collateral Agent made at any time after the occurrence of any Event of Default and in form and manner satisfactory to the Collateral Agent, the Accounts related to the Collateral and the other books, records and documents of such Issuer evidencing or pertaining to the Accounts related to the Collateral with an appropriate reference to the fact that the Accounts related to the Collateral have been assigned to the Collateral Agent for the benefit of the Secured Parties and that the Collateral Agent has security interests therein

SECTION 7 4 Modification of Terms, etc No Issuer shall rescind or cancel any indebtedness evidenced by any Account related to the Collateral or modify any term thereof or make any adjustment with respect thereto except in the ordinary course of business consistent with prudent business practice, or extend or renew any such indebtedness except in the ordinary course of business consistent with prudent business practice or compromise or settle any dispute, claim suit or legal proceeding relating thereto or sell any Account related to the Collateral or interest therein except in the ordinary course of business consistent with prudent business practice without the prior written consent of the Collateral Agent Each Issuer shall timely fulfill all obligations on its part to be fulfilled under or in connection with the Accounts related to the Collateral

SECTION 7 5 Collection Each Issuer shall cause to be collected from the account debtor of each of the Accounts related to the Collateral as and when due in the ordinary course of business consistent with prudent business practice (including without limitation Ac-

counts related to the Collateral that are delinquent, such Accounts to be collected in accordance with generally accepted commercial collection procedures) any and all amounts owing under or on account of such Account and apply forthwith upon receipt thereof all such amounts as are so collected to the outstanding balance of such Account, except that any Issuer may, with respect to an Account related to the Collateral, allow in the ordinary course of business (i) a refund or credit due as a result of returned or damaged or defective merchandise and (ii) such extensions of time to pay amounts due in respect of Accounts related to the Collateral and such other modifications of payment terms or settlements in respect of Accounts related to the Collateral as shall be commercially reasonable in the circumstances, all in accordance with such Issuer's ordinary course of business consistent with its collection practices as in effect from time to time The costs and expenses (including, without limitation, reasonable attorneys' fees) of collection, in any case, whether incurred by any Issuer the Collateral Agent or any Secured Party, shall be paid by the Issuers

ARTICLE VIII

TRANSFERS AND OTHER LIENS

SECTION 8 1 Transfers of and other Liens on Collateral No Issuer shall (i) sell, convey, assign or otherwise dispose of, or grant any option with respect to, any of the Collateral pledged by it hereunder except as permitted by the Purchase Agreements or (ii) create or permit to exist any Lien upon or with respect to any of the Collateral pledged by it hereunder other than in the case of Collateral, Permitted Collateral Liens and Subordinated Liens

ARTICLE IX

REMEDIES

SECTION 9 1 Remedies (a) Upon the occurrence and during the continuance of any Event of Default the Collateral Agent may from time to time exercise in respect of the Collateral, in addition to the other rights and remedies provided for herein or otherwise available to it

(i) Personally, or by agents or attorneys, immediately take possession of the Collateral or any part thereof, from any Issuer or any other Person who then has possession of any part thereof with or without notice or process of law, and for that purpose may enter upon any Issuer's premises where any of the Collateral is located, remove such Collateral, remain present at such premises to receive copies of all communications and remittances relating to the Collateral and use in connection with such removal and possession any and all services supplies, aids and other facilities of such Issuer,

(ii) Demand sue for collect or receive any money or property at any time payable or receivable in respect of the Collateral including without limitation, instructing the obligor or obligors on any agreement, instrument or other obligation constituting part of the Collateral to make any payment required by the terms of such agreement, instrument or other obligation directly to the Collateral Agent, and in connection with any of the foregoing, compromise, settle, extend the time for payment and make other modifications with respect thereto provided, however that in the event that any such payments are made directly to any Issuer, prior to receipt by any such obligor of such instruction, each Issuer shall segregate all amounts received pursuant thereto in trust for the benefit of the Collateral Agent and shall promptly (but in no event later than two Business Days after receipt thereof) pay such amounts to the Collateral Agent,

(iii) Sell, assign, grant a license to use or otherwise liquidate, or direct any Issuer to sell, assign, grant a license to use or otherwise liquidate, any and all investments made in whole or in part with the Collateral or any part thereof, and take possession of the proceeds of any such sale, assignment, license or liquidation,

(iv) Take possession of the Collateral or any part thereof, by directing any Issuer in writing to deliver the same to the Collateral Agent at any place or places so designated by the Collateral Agent, in which event such Issuer shall at its own expense (A) forthwith cause the same to be moved to the place or places designated by the Collateral Agent and there delivered to the Collateral Agent, (B) store and keep any Collateral so delivered to the Collateral Agent at such place or places pending further action by the Collateral Agent and (C) while the Collateral shall be so stored and kept, provide such security and maintenance services as shall be necessary to protect the same and to preserve and maintain them in good condition Each Issuer's obligation to deliver the Collateral as contemplated in this Section 9 1(iv) is of the essence hereof Upon application to a court of equity having jurisdiction, the Collateral Agent shall be entitled to a decree requiring specific performance by each Issuer of such obligation,

(v) Withdraw all moneys, instruments, securities and other property in any bank, financial securities, deposit or other account of any Issuer constituting Collateral for application to the Secured Obligations as provided in Article VIII hereof,

(vi) Require each Issuer to execute and deliver to the Secured Parties an assignment of the Intellectual Property Collateral (the "IP Assignment") Each Issuer hereby authorizes the Secured Parties to complete as Assignee and record with the United States Patent and Trademark Office and the United States Copyright Office each IP Assignment,

(vii) Exercise any and all rights as beneficial and legal owner of the Collateral, including, without limitation, perfecting assignment of and exercising any and all consensual and other rights and powers with respect to any Collateral and

(viii) All the rights and remedies of a secured party on default under the UCC, and the Collateral Agent may also in its sole discretion, without notice except as specified

in Section 9 2 hereof, sell, assign or grant a license to use the Collateral or any part thereof in one or more parcels at public or private sale at any exchange broker's board or at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, ~~and at such price or prices~~ and upon such other terms as the Collateral Agent may deem commercially reasonable The Collateral Agent or any other Secured Party or any of their respective Affiliates may be the purchaser licensee, assignee or recipient of any or all of the Collateral at any such sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold, assigned or licensed at such sale, to use and apply any of the Secured Obligations owed to such Person as a credit on account of the purchase price of any Collateral payable by such Person at such sale Each purchaser, assignee, licensee or recipient at any such sale shall acquire the property sold, assigned or licensed absolutely free from any claim or right on the part of any Issuer, and each Issuer hereby waives, to the fullest extent permitted by law, all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned Each Issuer hereby waives, to the fullest extent permitted by law, any claims against the Collateral Agent arising by reason of the fact that the price at which any Collateral may have been sold assigned or licensed at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree

SECTION 9 2 Notice of Sale Each Issuer acknowledges and agrees that, to the extent notice of sale or other disposition of Collateral shall be required by law, 10 days' prior notice to such Issuer of the time and place of any public sale or of the time after which any private sale or other intended disposition is to take place shall be commercially reasonable notification of such matters No notification need be given to any Issuer if it has signed, after the occurrence of an Event of Default, a statement renouncing or modifying any right to notification of sale or other intended disposition

SECTION 9 3 Waiver of Notice and Claims Each Issuer hereby waives, to the fullest extent permitted by applicable law, notice or judicial hearing in connection with the Collateral Agent's taking possession or the Collateral Agent's disposition of any of the Collateral, including, without limitation, any and all prior notice and hearing for any prejudgment remedy or remedies and any such right which such Issuer would otherwise have under law, and each Issuer hereby further waives, to the fullest extent permitted by applicable law (i) all damages occasioned by such taking of possession, (ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Collateral Agent s rights hereunder and (iii) all rights of redemption, appraisal, valuation, stay extension or moratorium now or hereafter in force under any applicable law The Collateral Agent shall not be liable for any incorrect or improper payment made pursuant to this Article IX in the absence of gross

negligence or willful misconduct Any sale of or the grant of options to purchase, or any other realization upon, any Collateral shall operate to divest all right, title interest claim and demand, either at law or in equity, of any Issuer therein and thereto, and shall be a perpetual bar both at law and in equity against any Issuer and against any and all Persons claiming or attempting to claim the Collateral so sold, optioned or realized upon, or any part thereof from, through or under the Issuers

SECTION 9 4 Certain Sales of Collateral

(i) Each Issuer recognizes that, by reason of certain prohibitions contained in law, rules regulations or orders of any Governmental Authority the Collateral Agent may be compelled, with respect to any sale of all or any part of the Collateral, to limit purchasers to those who meet the requirements of such Governmental Authority Each Issuer acknowledges that any such sales may be at prices and on terms less favorable to the Collateral Agent than those obtainable through a public sale without such restrictions and, notwithstanding such circumstances, agrees that any such restricted sale shall be deemed to have been made in a commercially reasonable manner and that, except as may be required by applicable law, the Collateral Agent shall have no obligation to engage in public sales

(ii) Each Issuer recognizes that, by reason of certain prohibitions contained in the Securities Act of 1933, as amended (the "Securities Act"), and applicable state securities laws, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Securities Collateral, to limit purchasers to Persons who will agree, among other things to acquire such Securities Collateral for their own account, for investment and not with a view to the distribution or resale thereof Each Issuer acknowledges that any such private sales may be at prices and on terms less favorable to the Collateral Agent than those obtainable through a public sale without such restrictions (including, without limitation, a public offering made pursuant to a registration statement under the Securities Act), and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Securities Collateral for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would agree to do so

(iii) Notwithstanding the foregoing, each Issuer shall, upon the occurrence and during the continuance of any Event of Default, at the reasonable request of the Collateral Agent, for the benefit of the Collateral Agent, cause any registration, qualification under or compliance with any Federal or state securities law or laws to be effected with respect to all or any part of the Securities Collateral as soon as practicable and at the sole cost and expense of such Issuer Each Issuer will use its commercially reasonable efforts to cause such registration to be effected (and be kept effective) and will use its commercially reasonable efforts to cause such qualification and compliance to be effected (and be kept effective) as may be so requested and as would permit or facilitate the sale and distribution of such Securities Collateral including, without limitation registration under the Securities Act (or any similar statute then in effect) appropriate qualifications under applicable blue sky or other state securities laws and appropriate compliance with all other

requirements of any Governmental Authority Each Issuer shall use its commercially reasonable efforts to cause the Collateral Agent to be kept advised in writing as to the progress of each such registration, qualification or compliance and as to the completion thereof shall furnish to the Collateral Agent ~~such number of prospectuses~~, offering circulars or other documents incident thereto as the Collateral Agent from time to time may request, and shall indemnify and shall cause the issuer of the Securities Collateral to indemnify the Collateral Agent and all others participating in the distribution of such Securities Collateral against all claims, losses, damages and liabilities caused by any untrue statement (or alleged untrue statement) of a material fact contained therein (or in any related registration statement, notification or the like) or by any omission (or alleged omission) to state therein (or in any related registration statement notification or the like) a material fact required to be stated therein or necessary to make the statements therein not misleading

(iv) If the Collateral Agent determines to exercise its right to sell any or all of the Securities Collateral, upon written request, each Issuer shall from time to time furnish to the Collateral Agent all such information as the Collateral Agent may request in order to determine the number of securities included in the Securities Collateral which may be sold by the Collateral Agent as exempt transactions under the Securities Act and the rules of the Securities and Exchange Commission thereunder as the same are from time to time in effect

(v) Each Issuer further agrees that a breach of any of the covenants contained in this Section 9 4 will cause irreparable injury to the Collateral Agent and other Secured Parties, that the Collateral Agent and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 9 4 shall be specifically enforceable against each Issuer, and each Issuer hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred and is continuing

SECTION 9 5 No Waiver, Cumulative Remedies

(i) No failure on the part of the Collateral Agent to exercise, no course of dealing with respect to, and no delay on the part of the Collateral Agent in exercising, any right, power or remedy hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any such right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right power or remedy, nor shall the Collateral Agent be required to look first to enforce or exhaust any other security, collateral or guaranties The remedies herein provided are cumulative and are not exclusive of any remedies provided by law

(ii) In the event that the Collateral Agent shall have instituted any proceeding to enforce any right, power or remedy under this Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Collateral Agent, then and in every such case, each Issuer, the Collateral Agent and each other Secured Party shall be restored to their respective former positions and rights hereunder with respect to the Collateral and all rights remedies and powers of the Collateral Agent and the other Secured Parties shall continue as if no such proceeding had been instituted

SECTION 9 6 Certain Additional Actions Regarding Intellectual Property If any Event of Default shall have occurred and be continuing upon the written demand of Collateral Agent, each Issuer shall execute and deliver to Collateral Agent an assignment or assignments of the registered Patents, Trademarks and/or Copyrights related to the Collateral and such other documents as are necessary or appropriate to carry out the intent and purposes hereof Within five Business Days of written notice thereafter from Collateral Agent, each Issuer shall make available to Collateral Agent to the extent within such Issuer's power and authority, such personnel in such Issuer's employ on the date of the Event of Default as Collateral Agent may reasonably designate to permit such Issuer to continue directly or indirectly, to produce advertise and sell the products and services sold by such Issuer under the registered Patents, Trademarks and/or Copyrights related to the Collateral, and such persons shall be available to perform their prior functions on Collateral Agent's behalf

ARTICLE X

APPLICATION OF PROCEEDS

The proceeds received by the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Collateral Agent of its remedies as a secured creditor as provided in Article IX hereof shall be applied, together with any other sums then held by the Collateral Agent in the manner set forth in the Intercreditor Agreement

ARTICLE XI

MISCELLANEOUS

SECTION 11 1 Concerning the Collateral Agent

(i) The Collateral Agent has been appointed as collateral agent pursuant to the Intercreditor Agreement The actions of the Collateral Agent hereunder are subject to the provisions of the Intercreditor Agreement The Collateral Agent shall have the right hereunder to make demands to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action (including, without limitation, the release or substitution of the Collateral), in accordance with this Agreement and the Intercreditor Agreement The Collateral Agent may employ agents and attorneys-in-fact in connection herewith and shall not be liable for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith The Collateral Agent may resign and a successor Collateral Agent may be appointed in the manner provided in the Intercreditor Agreement Upon the acceptance of any appointment as the Collateral Agent by a successor Collateral Agent that successor Collateral Agent shall thereupon succeed to and become vested with all the rights powers, privileges and duties of the retiring Collateral Agent under this Agreement and the retiring Collateral Agent shall thereupon be dis-

charged from its duties and obligations under this Agreement After any retiring Collateral Agent's resignation, the provisions hereof shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Collateral Agent

(ii) The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if such Collateral is accorded treatment substantially equivalent to that which the Collateral Agent, in its individual capacity, accords its own property consisting of similar instruments or interests, it being understood that neither the Collateral Agent nor any of the Secured Parties shall have responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges maturities, tenders or other matters relating to any Securities Collateral, whether or not the Collateral Agent or any other Secured Party has or is deemed to have knowledge of such matters, or (ii) taking any necessary steps to preserve rights against any Person with respect to any Collateral

(iii) The Collateral Agent shall be entitled to rely upon any written notice statement, certificate order or other document believed by it to be genuine and correct and to have been signed, sent or made by the proper person, and, with respect to all matters pertaining to this Agreement and its duties hereunder, upon advice of counsel selected by it

(iv) If any item of Collateral also constitutes collateral granted to Collateral Agent under any other deed of trust, mortgage, security agreement, pledge or instrument of any type, in the event of any conflict between the provisions hereof and the provisions of such other deed of trust, mortgage, security agreement, pledge or instrument of any type in respect of such collateral, the Collateral Agent, in its sole discretion, shall select which provision or provisions shall control

SECTION 11 2 Collateral Agent May Perform, Collateral Agent Appointed Attorney-in-Fact If any Issuer shall fail to perform any covenants contained in this Agreement (including, without limitation, any Issuer's covenants to (i) pay the premiums in respect of all required insurance policies hereunder, (ii) pay Charges, (iii) make repairs, (iv) discharge Liens or (v) pay or perform any obligations of any Issuer under any Collateral) or if any warranty on the part of any Issuer contained herein shall be breached, the Collateral Agent may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose, provided, however, that Collateral Agent shall in no event be bound to inquire into the validity of any tax, lien, imposition or other obligation which any Issuer fails to pay or perform as and when required hereby and which such Issuer does not contest in accordance in accordance with the provision of Section 4 13 hereof Any and all amounts so expended by the Collateral Agent shall be paid by the Issuers in accordance with the provisions of Section 11 3 hereof Neither the provisions of this Section 11 2 nor any action taken by Collateral Agent pursuant to the provisions of this Section 11 2 shall prevent any such failure to observe any covenant contained in this Agreement nor any breach of warranty form constituting an Event of Default Each Issuer hereby appoints the Collateral Agent its attorney-in-fact with full authority in the place and stead of such Issuer and in the name of such Issuer, or otherwise, from time to time in the Collateral Agent s discretion to take any action and to execute any instrument consistent with the terms of the Intercreditor Agreement and the other collateral documents

which the Collateral Agent may deem necessary or advisable to accomplish the purposes hereof The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof Each Issuer hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof

SECTION 11 3 Expenses Each Issuer will upon demand pay to the Collateral Agent the amount of any and all costs and expenses, including the fees and expenses of its counsel and the fees and expenses of any experts and agents which the Collateral Agent may incur in connection with (i) any action, suit or other proceeding affecting the Collateral or any part thereof commenced, in which action, suit or proceeding the Collateral Agent is made a party or participates or in which the right to use the Collateral or any part thereof is threatened, or in which it becomes necessary in the judgment of the Collateral Agent to defend or uphold the Liens hereof (including without limitation, any action, suit or proceeding to establish or uphold the compliance of the Collateral with any requirements of any Governmental Authority or law), (ii) the collection of the Secured Obligations, (iii) the enforcement and administration hereof, (iv) the custody or preservation of, or the sale of, collection from, or other realization upon, any of the Collateral, (v) the exercise or enforcement of any of the rights of the Collateral Agent or any Secured Party hereunder or (vi) the failure by any Issuer to perform or observe any of the provisions hereof All amounts expended by the Collateral Agent and payable by the Issuers under this Section 11 3 shall be due upon demand therefor (together with interest thereon accruing at the highest rate then in effect under the Purchase Agreements during the period from and including the date on which such funds were so expended to the date of repayment) and shall be part of the Secured Obligations Each Issuer's obligations under this Section 11 3 shall survive the termination hereof and the discharge of such Issuer's other obligations under this Agreement the Purchase Agreements and the other collateral documents

SECTION 11 4 Indemnity

(i) Indemnity Each Issuer agrees to indemnify, pay and hold harmless the Collateral Agent and each of the other Secured Parties and the officers, directors, employees, agents and Affiliates of the Collateral Agent and each of the other Secured Parties (collectively, the "Indemnitees") from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs (including, without limitation, settlement costs), expenses or disbursements of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding, commenced or threatened, whether or not such Indemnitee shall be designated a party thereto) which may be imposed on, incurred by, or asserted against that Indemnitee in any manner relating to or arising out of this Agreement, the Purchase Agreements, the Securities, the Preferred Stock, the Certificate of Designation any other collateral document or any other document evidencing the Secured Obligations (including without limitation any misrepresentation by any Issuer in this Agreement the Purchase Agreements, the Securities, the Preferred Stock, other collateral document or any other document evidencing the Secured Obligations) (the Indemnified Liabilities') provided, however, that no Issuer shall have any obligation to an Indemnitee hereunder with respect to Indemnified Liabilities if it has been determined by a final decision (after all appeals and the expiration of time to ap-

peal) of a court of competent jurisdiction that such Indemnified Liabilities arose from the gross negligence or willful misconduct of that Indemnitee To the extent that the undertaking to indemnify, pay and hold harmless set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, each Issuer shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them

(ii) Survival The obligations of such Issuer's contained in this Section 11 4 shall survive the termination hereof and the discharge of such Issuer's other obligations under this Agreement, the Purchase Agreements and under the other collateral documents

(iii) Reimbursement Any amounts paid by any Indemnitee as to which such Indemnitee has the right to reimbursement shall constitute Secured Obligations secured by the Collateral

SECTION 11 5 Continuing Security Interests, Assignment This Agreement shall create a continuing security interest in the Collateral and shall (i) be binding upon each Issuer, their respective successors and assigns and (ii) inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent and the other Secured Parties and each of their respective successors transferees and assigns No other Persons (including, without limitation, any other creditor of the Issuers) shall have any interest herein or any right or benefit with respect hereto Without limiting the generality of the foregoing clause (ii), any Secured Party may assign or otherwise transfer any indebtedness held by it secured by this Agreement to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Secured Party, herein or otherwise

SECTION 11 6 Termination, Release The Collateral shall be released from the Liens of this Agreement upon satisfaction in full of the Secured Obligations relating to the Securities and the Vaniqa Collateral shall be released from the Liens of this Agreement upon satisfaction in full of the Secured Obligations relating to the Preferred Stock Upon termination hereof or any release of Collateral and/or Vaniqa Collateral, as the case may be, in accordance with the foregoing, the Collateral Agent shall, upon the request and at the sole cost and expense of the Issuers, assign, transfer and deliver to the Issuers, against receipt and without recourse to or warranty by the Collateral Agent, such of the Collateral and/or Vaniqa Collateral, as the case may be, to be released (in the case of a release) as may be in possession of the Collateral Agent and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Collateral proper documents and instruments (including UCC-3 termination statements or releases) acknowledging the termination hereof or the release of such Collateral and/or the Vaniqa Collateral, as the case may be

SECTION 11 7 Modification in Writing No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by the Issuers therefrom, shall be effective unless the same shall be made in accordance with the terms of the Purchase Agreements and the Certificate of Designation unless in writing and signed by the Collateral Agent Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by any Issuer from the

terms of any provision hereof shall be effective only in the specific instance and for the specific purpose for which made or given Except where notice is specifically required by this Agreement or any other document evidencing the Secured Obligations, no notice to or demand on any Issuer in any case shall entitle such Issuer to any other or further notice or demand in similar or other circumstances

SECTION 11 8 Notices Unless otherwise provided herein or in the Purchase Agreements, any notice or other communication herein required or permitted to be given shall be given in the manner and become effective as set forth in the Purchase Agreements, as to such Issuer, addressed to it at the address of such Issuer set forth in the Purchase Agreements and as to the Collateral Agent, addressed to it at the address set forth in the Intercreditor Agreement, or in each case at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 11 8

SECTION 11 9 GOVERNING LAW THIS AGREEMENT SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK

SECTION 11 10 CONSENT TO JURISDICTION AND SERVICE OF PROCESS, WAIVER OF JURY TRIAL ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST THE ISSUERS WITH RESPECT TO THIS AGREEMENT MAY BE BROUGHT IN THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY, THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK AND APPELLATE COURTS OF ANY THEREOF, AND BY EXECUTION AND DELIVERY HEREOF, EACH ISSUER ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT EACH ISSUER AGREES THAT SERVICE OF PROCESS IN ANY PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO SUCH ISSUER AT ITS ADDRESS SET FORTH IN THE PURCHASE AGREEMENTS OR AT SUCH OTHER ADDRESS OF WHICH THE COLLATERAL AGENT SHALL HAVE BEEN NOTIFIED PURSUANT THERETO IF ANY AGENT APPOINTED BY ANY ISSUER REFUSES TO ACCEPT SERVICE, SUCH ISSUER HEREBY AGREES THAT SERVICE UPON IT BY MAIL SHALL CONSTITUTE SUFFICIENT NOTICE NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT OF THE COLLATERAL AGENT TO BRING PROCEEDINGS AGAINST EACH ISSUER IN THE COURTS OF ANY OTHER JURISDICTION EACH ISSUER HEREBY IRREVOCABLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY

SECTION 11 11 Severability of Provisions Any provision hereof which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction

SECTION 11 12 Execution in Counterparts This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts each of which when so executed and delivered shall be deemed to be an original but all such counterparts together shall constitute one and the same agreement

SECTION 11 13 Business Days In the event any time period or any date provided in this Agreement ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the next succeeding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day

SECTION 11 14 No Credit for Payment of Taxes or Imposition No Issuer shall be entitled to any credit against the principal, premium, if any, or interest payable under the Security Purchase Agreement or the Securities, or any liquidation preference or dividends under the Preferred Stock Purchase Agreement or the Preferred Stock, and no Issuer shall be entitled to any credit against any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any Tax on the Collateral or any part thereof

SECTION 11 15 No Claims Against Collateral Agent Nothing contained in this Agreement shall constitute any consent or request by the Collateral Agent, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Collateral or any part thereof, nor as giving any Issuer any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Collateral Agent in respect thereof or any claim that any Lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the Liens hereof

SECTION 11 16 Obligations Absolute All obligations of the Issuers hereunder shall be absolute and unconditional irrespective of

(i) any bankruptcy insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Issuer,

(ii) any lack of validity or enforceability of the Purchase Agreements, the Securities, the Preferred Stock or any other collateral document, or any other agreement or instrument relating thereto,

(iii) any change in the time, manner or place of payment of or in any other term of all or any of the Secured Obligations, or any other amendment or waiver of or

any consent to any departure from the Purchase Agreements the Securities, the Preferred Stock or any other collateral document, or any other agreement or instrument relating thereto

(iv) any pledge, exchange, release or non-perfection of any other collateral or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations,

(v) any exercise, non-exercise or waiver of any right remedy, power or privilege under or in respect hereof, the Purchase Agreements, the Securities, the Preferred Stock or any other collateral document except as specifically set forth in a waiver granted pursuant to the provisions of Section 11.7 hereof or

(vi) any other circumstances which might otherwise constitute a defense available to, or a discharge of, any Issuer

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IN WITNESS WHEREOF, the Issuers and the Collateral Agent have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written

WOMEN FIRST HEALTHCARE, INC

By _____
Name Charles M Caporale
Title Vice President, Chief Financial Officer, Treasurer and Secretary

AS WE CHANGE, L L C

By WOMEN FIRST HEALTHCARE, INC
Its Manager and Sole Member

By _____
Name Charles M Caporale
Title Vice President, Chief Financial Officer, Treasurer and Secretary

CIBC WMC INC ,
as Collateral Agent

By _____
Name
Title

IN WITNESS WHEREOF, the Issuers and the Collateral Agent have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written

WOMEN FIRST HEALTHCARE, INC

By _____
Name
Title

AS WE CHANGE, L L C

By _____
Name
Title

CIBC WMC INC ,
as Collateral Agent

By _____
Name William Phoenix
Title Managing Director

SCHEDULE 1 1(a)

Prior I iens on Pledged Collateral

DEBIOR	JURISDICTION	SECURED PARTY	FILE NUMBER/DATE	COLLATERAL
None				

SCHEDULE 1 1(b)

Prior Liens on Second Lien Collateral

DEBTOR	JURISDICTION	SECURED PARTY	FILE NUMBER/DATE	COLLATERAL
Women First HealthCare Inc	Delaware	Wyeth, as successor to American Home Products Corporation	N/A	Assets relating to Equagesic Synalgos and Wygesic

SCHEDULE 4 10

Required Consents

Reference is made to the Wyeth Consent (as defined in the Agreement) Wyeth, as successor to American Home Products Corporation, holds an existing lien on the Second Lien Collateral (as defined in the Agreement) to secure the Company's obligations under a secured promissory note with a remaining principal balance of approximately $6 2 million The consent of Wyeth is required prior to any pledge or lien by the Company with respect to the Second Lien Collateral

SCHEDULE 6 3

Violations or Proceedings

None

ISSUERS' ACKNOWLEDGMENT

The undersigned hereby (i) acknowledges receipt of a copy of that certain amended and restated security agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Amended and Restated Security Agreement", capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Amended and Restated Security Agreement), dated as of May 12, 2003, among Women First HealthCare, Inc (the "Company"), and the Guarantors listed on the signature pages thereto or from time to time party thereto by execution of a Joinder Agreement (the "Guarantors"), as pledgors, assignors and debtors (the Company, together with the Guarantors, in such capacities and together with any successors in such capacities, the "Issuers", and each, an "Issuer"), in favor of CIBC WMC Inc , as Collateral Agent (in such capacity and together with any successors in such capacity, the "Collateral Agent"), (ii) agrees that it will comply with instructions of the Collateral Agent with respect to the applicable Securities Collateral and without further consent by the applicable Issuer and (iii) agrees promptly to note on its books the security interests granted to the Collateral Agent and confirmed under the Amended and Restated Security Agreement

AS WE CHANGE, L L C

By WOMEN FIRST HEALTHCARE, INC
Its Manager and Sole Member

By _____
Name Charles M Caporale
Title Vice President, Chief Financial Officer, Secretary and Treasurer

WELLS FARGO

RESTRICTED ACCOUNT AGREEMENT

(ACCOUNT RESTRICTED AFTER INSTRUCTIONS – Standing Wire Transfers)

This **Restricted Account Agreement** (the Agreement) dated as of the date specified at the end of this Agreement, is entered into among **Women First HealthCare, Inc** (Company'), **CIBC WMC Inc** ('Secured Party") and the Wells Fargo Bank identified in the signature block at the end of this Agreement (Bank"), and sets forth the rights of Secured Party and the obligations of Bank with respect to the deposit account(s) of Company at Bank identified at the end of this Agreement as the 'Restricted Account(s)" As used in this Agreement, the term Restricted Account" refers individually and collectively, to each such deposit account All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York

1 **Secured Party's Interest in Restricted Account** Secured Party represents that it is either (i) a lender who has extended credit to Company and has been granted a security interest in the Restricted Account or (ii) such a lender and the agent for a group of such lenders (the 'Lenders") Company hereby confirms, and Bank hereby acknowledges the security interest granted by Company to Secured Party in all of Company's right, title and interest in and to the Restricted Account and all sums now or hereafter on deposit in or payable or withdrawable from the Restricted Account (the "Account Funds') Except as specifically provided otherwise in this Agreement, Company has given Secured Party complete control" (as defined in Section 9-104 of the UCC) over the Account Funds Secured Party hereby appoints Bank as agent for Secured Party only for the purpose of perfecting the security interest of Secured Party in the Account Funds while they are in the Restricted Account Company and Secured Party would like to use the Restricted Account Service of Bank described in this Agreement (the Service') to further the arrangements between Secured Party and Company regarding the Restricted Account and the Account Funds

2 **Access to Restricted Account** Secured Party agrees that Company will be allowed access to the Account Funds until Bank receives written instructions from Secured Party directing that Company no longer have access to any Account Funds (the "Instructions") Company agrees that the Account Funds should be paid to Secured Party after Bank receives the Instructions and hereby irrevocably authorizes Bank to comply with the Instructions even if Company objects in any way to the Instructions Company further agrees that after Bank receives the Instructions, Company will not have access to any Account Funds It is understood and agreed that the Secured Party may deliver the Instructions without further consent of the Company or any other person The Secured Party hereby agrees not to deliver such Instructions unless an Event of Default (as defined in the Note and Warrant Purchase Agreement dated June 25, 2002, as amended by the First Amendment thereto of even date herewith) has occurred and is continuing

3 **Balance Reports** Bank agrees at the telephone request of Secured Party on any Business Day (a day on which Bank is open to conduct its regular banking business, other than a Saturday Sunday or public holiday) to make available to Secured Party a report ('Balance Report) showing the opening available balance in the Restricted Account as of the beginning of such Business Day either on-line or by facsimile transmission at Bank s option Company

expressly consents to this transmission of information Secured Party and Company understand and agree that the opening available balance in the Restricted Account at the beginning of any Business Day will be determined after deducting from the Restricted Account the face amount of all Returned Items (as defined in Section 8 of this Agreement)

4 **Transfers to Secured Party** Bank agrees that on each Business Day after it receives the instructions it will transfer to the Secured Party's account specified at the end of this Agreement with the bank specified at the end of this Agreement (the Secured Party Account") the full amount of the opening available balance in the Restricted Account at the beginning of such Business Day Bank will use the Fedwire system to make each funds transfer unless for any reason the Fedwire system is unavailable, in which case Bank will determine the funds transfer system to be used in making each funds transfer and the means by which each transfer will be made Bank Secured Party and Company each agree that Bank will comply with instructions given to Bank by Secured Party directing disposition of funds in the Restricted Account without further consent by Company, subject otherwise to the terms of this Agreement and Bank's standard policies, procedures and documentation in effect from time to time governing the type of disposition requested Except as otherwise required by law, Bank will not agree with any third party to comply with instructions for disposition of funds in the Restricted Account originated by such third party

5 **Delays in Making Funds Transfers** Secured Party and Company understand that a funds transfer may be delayed or not made if (a) the transfer would cause Bank to exceed any limitation on its intra-day net funds position established in accordance with Federal Reserve or other regulatory guidelines or to violate any other Federal Reserve or other regulatory risk control program, or (b) the funds transfer would otherwise cause Bank to violate any applicable law or regulation If a funds transfer cannot be made or will be delayed, Bank will notify Secured Party by telephone

6 **Reliance on Identifying Numbers** If Secured Party indicates a name and an identifying number for the bank of the person or entity to receive funds transfers out of the Restricted Account Secured Party and Company understand and agree that Bank may rely on the number Secured Party indicates even if that number identifies a bank different from the bank Secured Party named If Secured Party indicates a name and an account number for the person or entity to receive funds transfers out of the Restricted Account, Secured Party and Company understand and agree that Bank may rely on the account number Secured Party indicates even if that account number is not the account number for the person or entity who is to receive the transfers

7 **Reporting Errors in Transfers** If Secured Party or Company learns of any error in a funds transfer or any unauthorized funds transfer, then the party learning of such error or unauthorized transfer (the Informed Party") must notify Bank as soon as possible by telephone at (800) AT-WELLS (which is a recorded line) and provide written confirmation to Bank of such telephonic notice within two Business Days at the address given for Bank on the signature page of this Agreement In no case may such notice to Bank by an Informed Party be made more than fourteen (14) calendar days after such Informed Party learns of the erroneous or unauthorized transfer If a funds transfer is made in error and Bank suffers a loss because an Informed Party breached its agreement to notify Bank of such error within the time limits specified in this Section 7, then such Informed Party shall reimburse Bank for the loss promptly upon demand by Bank, provided, however, that in the event both Secured Party and Company breach this notification requirement, Secured Party shall not be obligated to reimburse Bank for the loss unless Company fails to satisfy Bank's demand for reimbursement within fifteen (15) calendar days after demand is made on Company

8 **Returned Item Amounts** Secured Party and Company understand and agree that the face amount ('Returned Item Amount) of each Returned Item will be paid by Bank debiting the Restricted Account, without prior notice to Secured Party or Company As used in this Agreement the term Returned Item means (i) any item deposited to the Restricted Account and returned unpaid, whether for insufficient funds or for any other reason, and without regard to the timeliness of such return or the occurrence or timeliness of any drawee's notice of non-payment (ii) any item subject to a claim against Bank of breach of transfer or presentment warranty under the Uniform Commercial Code as adopted in the applicable state, (iii) any automated clearing house (ACH") entry credited to the Restricted Account and returned unpaid or subject to an adjustment entry under applicable clearing house rules, whether for insufficient funds or for any other reason, and without regard to the timeliness of such return or adjustment (iv) any credit to the Restricted Account from a merchant card transaction, against which a contractual demand for chargeback has been made, and (v) any credit to the Restricted Account made in error Company agrees to pay all Returned Item Amounts immediately on demand without setoff or counterclaim to the extent there are not sufficient funds in the Restricted Account to cover the Returned Item Amounts on the day they are to be debited from the Restricted Account Secured Party agrees to pay all Returned Item Amounts within thirty (30) calendar days after demand, without setoff or counterclaim, to the extent the Returned Item Amounts are not paid in full by Company within fifteen (15) calendar days after demand on Company by Bank and to the extent Secured Party received proceeds from the corresponding Returned Items

9 **Bank Fees** Company agrees to pay all Bank's fees and charges for the maintenance and administration of the Restricted Account and for the treasury management and other account services provided with respect to the Restricted Account (collectively Bank Fees'), including, but not limited to, the fees for (a) the Balance Reports provided on the Restricted Account, (b) the wire transfer services received with respect to the Restricted Account, (c) Returned Items, (d) funds advanced to cover overdrafts in the Restricted Account (but without Bank being in any way obligated to make any such advances) and (e) duplicate bank statements on the Restricted Account Before Bank receives the Instructions, the Bank Fees will be paid by Bank debiting the Restricted Account and after Bank receives the Instructions the Bank fees will be paid by Bank debiting one or more of the demand deposit operating accounts of Company at Bank specified at the end of this Agreement (the Operating Accounts") All such debits will be made on the Business Day that the Bank Fees are due without notice to Secured Party or Company If there are not sufficient funds in the Restricted Account, or after Bank receives the Instructions, the Operating Accounts, to cover fully the Bank Fees on the Business Day they are debited from the Restricted Account or the Operating Accounts, or if no Operating Accounts are indicated at the end of this Agreement, such shortfall or the amount of such Bank Fees will be paid by Company sending Bank a check in the amount of such shortfall or such Bank Fees, without setoff or counterclaim, within fifteen (15) calendar days after demand of Bank Bank may in its discretion, change the Bank Fees upon thirty (30) calendar days prior written notice to Company

10 **Account Documentation** Secured Party and Company agree that, except as specifically provided in this Agreement, the Restricted Account will be subject to, and Bank's operation of the Restricted Account will be in accordance with, the terms and provisions of Bank's deposit account agreement governing the Restricted Account ('Account Agreement"), a copy of which Company and Secured Party acknowledge having received

11 **Bank Statements** After Bank receives the Instructions, Bank will, if so indicated on the signature page of this Agreement send to Secured Party by United States mail at the address indicated for Secured Party after its signature to this Agreement, duplicate copies of all bank statements on the Restricted Account which are sent to Company Company and/or Secured Party will have thirty (30) calendar days after receipt of a bank statement to notify Bank of an

error in such statement Bank's liability for such errors is limited as provided in the Limitation of Liability section of this Agreement

12 **Partial Subordination of Bank's Rights** Bank hereby subordinates to the security interest of Secured Party in the Restricted Account (i) any security interest which Bank may have or acquire in the Restricted Account and (ii) any right which Bank may have or acquire to set off or otherwise apply any Account Funds against the payment of any indebtedness from time to time owing to Bank from Company, except for debits to the Restricted Account permitted under this Agreement for the payment of Returned Item Amounts or Bank Fees

13 **Bankruptcy Notice, Effect of Filing** If Bank at any time receives notice of the commencement of a bankruptcy case or other insolvency or liquidation proceeding by or against Company (a Bankruptcy Notice"), Bank will continue to comply with its obligations under this Agreement, except to the extent that any action required of Bank under this Agreement is prohibited under applicable bankruptcy laws or regulations or is stayed pursuant to the automatic stay imposed under the United States Bankruptcy Code or by order of any court or agency With respect to any obligation of Secured Party hereunder which requires prior demand upon Company, the commencement of a bankruptcy case or other insolvency or liquidation proceeding by or against Company shall automatically eliminate the necessity of such demand upon Company by Bank, and shall immediately entitle Bank to make demand on Secured Party with the same effect as if demand had been made upon Company and the time for Company's performance had expired

14 **Legal Process, Legal Notices and Court Orders** Bank will comply with any legal process legal notice or court order it receives if Bank determines in its sole discretion that the legal process legal notice or court order is legally binding on it

15 **Indemnification for Following Instructions** Secured Party and Company each agree that notwithstanding any other provision of this Agreement, Bank will not be liable to Secured Party or Company for any losses, liabilities damages, claims (including, but not limited to third party claims), demands, obligations, actions, suits, judgments, penalties, costs or expenses, including but not limited to, attorneys fees (collectively, "Losses and Liabilities) suffered or incurred by Secured Party or Company as a result of or in connection with (a) Bank complying with any binding legal process, legal notice or court order referred to in Section 14 of this Agreement, (b) Bank following any instruction or request of Secured Party or (c) Bank complying with its obligations under this Agreement Further, Company will indemnify Bank against any Losses and Liabilities Bank may suffer or incur as a result of or in connection with any of the circumstances referred to in clauses (a) through (c) of this Section 15 To the extent not paid by Company within fifteen (15) calendar days after demand, Secured Party, will indemnify Bank against any Losses and Liabilities Bank may suffer or incur as a result of or in connection with any of the circumstances referred to in clause (b) of this Section 15

16 **No Implied Representations or Warranties of Bank** The Bank represents and warrants that each of the Restricted Accounts is a deposit account" as defined in Section 9-102(a)(29) of the UCC as 'a demand time, savings passbook, or similar account maintained with a bank, and is not represented by an instrument Bank agrees to perform its obligations under this Agreement in a manner consistent with the quality provided when Bank performs similar services for its own account However Bank will not be responsible for the errors, acts or omissions of others such as communications carriers correspondents or clearinghouses through which Bank may perform its obligations under this Agreement or receive or transmit information in performing its obligations under this Agreement Secured Party and Company also understand that Bank will not be responsible for any loss liability or delay caused by wars, failures in communications networks labor disputes legal constraints fires power surges or failures earthquakes civil

disturbances or other events beyond Bank's control **BANK MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICE OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT**

17 **Limitation of Liability** In the event that Secured Party, Company or Bank suffers or incurs any Losses and Liabilities as a result of, or in connection with, its or any other party's performance or failure to perform its obligations under this Agreement, the affected parties shall negotiate in good faith in an effort to reach a mutually satisfactory allocation of such Losses and Liabilities it being understood that Bank will not be responsible for any Losses and Liabilities due to any cause other than its own negligence or breach of this Agreement, in which case its liability to Secured Party and Company shall, unless otherwise provided by any law which cannot be varied by contract, be limited to direct money damages in an amount not to exceed ten (10) times all the Bank Fees charged or incurred during the calendar month immediately preceding the calendar month in which such Losses and Liabilities occurred (or, if no Bank Fees were charged or incurred in the preceding month, the Bank Fees charged or incurred in the month in which the Losses and Liabilities occurred) Company will indemnify Bank against all Losses and Liabilities suffered or incurred by Bank as a result of third party claims provided, however, that to the extent such Losses and Liabilities are directly caused by Bank's negligence or breach of this Agreement such indemnity will only apply to those Losses and Liabilities which exceed the liability limitation specified in the preceding sentence The limitation of Bank's liability and the indemnification by Company set out above will not be applicable to the extent any Losses and Liabilities of any party to this Agreement are directly caused by Bank s gross negligence or willful misconduct **IN NO EVENT WILL BANK BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR PUNITIVE DAMAGES, WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, WHETHER THE LIKELIHOOD OF SUCH DAMAGES WAS KNOWN TO BANK AND REGARDLESS OF THE FORM OF THE CLAIM OR ACTION, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM OR ACTION ALLEGING GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FAILURE TO EXERCISE REASONABLE CARE OR FAILURE TO ACT IN GOOD FAITH** Any action against Bank by Company or Secured Party under or related to this Agreement must be brought within twelve months after the ca ise of action accrues

18 **Termination** This Agreement and the Service may be terminated by Secured Party or Bank at any time by either of them giving thirty (30) calendar days prior written notice of such termination to the other two parties to this Agreement at their contact addresses specified after their signatures to this Agreement, provided, however, that this Agreement and the Service may be terminated immediately upon written notice from Bank to Company and Secured Party should Secured Party fail to make any payment when due to Bank from Secured Party under the terms of this Agreement Secured Party and Company agree that the Restricted Account may be closed by Bank as provided in the Account Agreement Company's and Secured Party s obligation to report errors in funds transfers and bank statements and to pay the Bank Fees, as well as the indemnifications made, and the limitations on the liability of Bank accepted, by Company and Secured Party under this Agreement will continue after the termination of this Agreement and/or the closure of the Restricted Account with respect to all the circumstances to which they are applicable existing or occurring before such termination or closure, and any liability of any party to this Agreement, as determined under the provisions of this Agreement with respect to acts or omissions of such party prior to such termination or closure will also survive such termination or closure Upon any termination of this Agreement and the Service or closure of the Restricted Account all collected and available balances in the Restricted Account on the date of such termination or closure will be transferred to Secured Party or as requested by Secured Party in writing to Bank

19 **Modifications, Amendments, and Waivers** This Agreement may not be modified or amended or any provision thereof waived, except in a writing signed by all the parties to this Agreement provided however that the Bank Fees may be changed after thirty (30) calendar days prior written notice to Company and Secured Party

20 **Notices** All notices from one party to another shall be in writing or be made by a telecommunications device capable of creating a written record shall be delivered to Company Secured Party and/or Bank at their contact addresses specified after their signatures to this Agreement or any other address of any party notified to the other parties in writing, and shall be effective upon receipt Any notice sent by one party to this Agreement to another party shall also be sent to the third party to this Agreement Bank is authorized by Company and Secured Party to act on any instructions or notices received by Bank if (a) such instructions or notices purport to be made in the name of Secured Party, (b) Bank reasonably believes that they are so made and (c) they do not conflict with the terms of this Agreement as such terms may be amended from time to time, unless such conflicting instructions or notices are supported by a court order

21 **Successors and Assigns** Neither Company nor Secured Party may assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of Bank, which consent will not be unreasonably withheld Bank may not assign its rights or obligations under this Agreement to any person or entity without the prior written consent of Secured Party, which consent will not be unreasonably withheld, provided, however that no such consent will be required if the assignee is a bank affiliate of Bank

22 **Governing Law** Company and Secured Party understand that Bank's provision of the Service under this Agreement is subject to federal laws and regulations To the extent that such federal laws and regulations are not applicable this Agreement shall be governed by and be construed in accordance with the laws of the State of New York without regard to conflict of laws principles Regardless of any provision in any other agreement, for purposes of the UCC, New York shall be deemed to be Bank's jurisdiction and the Restricted Account shall be governed by the law of the State of New York

23 **Severability** To the extent that this Agreement or the Service to be provided under this Agreement are inconsistent with or prohibited or unenforceable under any applicable law or regulation, they will be deemed ineffective only to the extent of such prohibition or unenforceability and be deemed modified and applied in a manner consistent with such law or regulation Any provision of this Agreement which is deemed unenforceable or invalid in any jurisdiction shall not affect the enforceability or validity of the remaining provisions of this Agreement or the same provision in any other jurisdiction

24 **Usury** It is never the intention of Bank to violate any applicable usury or interest rate laws Bank does not agree to, or intend to contract for, charge, collect take reserve or receive (collectively charge or collect") any amount in the nature of interest or in the nature of a fee, penalty or other charge which would in any way or event cause Bank to charge or collect more than the maximum Bank would be permitted to charge or collect by any applicable federal or state law Any such excess interest or unauthorized fee shall, notwithstanding anything stated to the contrary in this Agreement, be applied first to reduce the amount owed, if any and then any excess amounts will be refunded

25 **Counterparts** This Agreement may be executed in any number of counterparts each of which shall be an original with the same effect as if the signatures thereto and hereto were upon the same instrument

26 **Entire Agreement** This Agreement together with the Account Agreement, contains the entire and only agreement among all the parties to this Agreement and between Bank and Company and Bank and Secured Party with respect to (a) the Service (b) the interest of Secured Party and the Lenders in the Account Funds and the Restricted Account, and (c) Bank's obligations to Secured Party and the Lenders in connection with the Account Funds and the Restricted Account

[REST OF PAGE INTENTIONALLY LEFT BLANK]

This Agreement has been signed by the duly authorized officers or representatives of Company Secured Party and Bank on the date specified below

Date. May 12, 2003

Restricted Account Number(s)	4172321515 and 4945068047
Operating Account Number(s)	4172321515
Secured Party Account Number	
Bank of Secured Party Account	

Secured Party is to be sent duplicate Bank Statements

Women First HealthCare, Inc

By

Name Charles M Caporale

Title Vice President, Chief Financial Officer, Secretary and Treasurer

Address For All Notices

12220 El Camino Real, Suite 400

San Diego, California 92130

CIBC WMC Inc

By

Name

Title

Address For All Notices

425 Lexington Avenue

New York, NY 10017

WELLS FARGO BANK, N A

By

Name

Title

Address For All Notices

401 "B" Street, Suite 2201

MAC E2901-012

San Diego, CA 92101

Attn Linda Schneider, VP

This Agreement has been signed by the duly authorized officers or representatives of Company, Secured Party and Bank on the date specified below

Date May 12, 2003

Restricted Account Number(s)	4172321515 and 4945068047
Operating Account Number(s)	4172321515
Secured Party Account Number	
Bank of Secured Party Account	

Secured Party is to be sent duplicate Bank Statements

Women First HealthCare Inc	CIBC WMC Inc
By	By
Name Charles M Caporale	Name William Phoenix
Title Vice President, Chief Financial Officer, Secretary and Treasurer	Title Managing Director
Address For All Notices	Address For All Notices
12220 El Camino Real, Suite 400	425 Lexington Avenue
San Diego California 92130	New York, NY 10017

WELLS FARGO BANK, N.A.

By

Name

Title

Address For All Notices

401 "B" Street, Suite 2201

MAC E2901-012

San Diego CA 92101

Attn Linda Schneider VP

This Agreement has been signed by the duly authorized officers or representatives of Company Secured Party and Bank on the date specified below

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Women First HealthCare, Inc

By _____

Name Charles M Caporale

Title Vice President Chief Financial Officer, Secretary and Treasurer

Address For All Notices

12220 El Camino Real, Suite 400

San Diego, California 92130

CIBC WMC Inc

By _____

Name _____

Title _____

Address For All Notices

425 Lexington Avenue

New York, NY 10017

WELLS FARGO BANK, N A

By Linda K Schneider

Name Linda K Schneider

Title Vice President

Address For All Notices

401 "B" Street, Suite 2201

MAC E2901-012

San Diego, CA 92101

Attn Linda Schneider, VP

SECURITIES ACCOUNT CONTROL AGREEMENT

THIS SECURITIES ACCOUNT CONTROL AGREEMENT (this "Agreement") is entered into as of May __ _____, by and among WOMEN FIRST HEALTHCARE INC ("Customer") WELLS FARGO BANK MINNESOTA, N A ("Intermediary"), and CIBC WMC INC ("Secured Party")

RECITALS

A Customer maintains that certain Institutional Brokerage Account No 12562344 (the "Securities Account") with Intermediary pursuant to an agreement between Intermediary and Customer dated as of _____ (the "Investment Account Agreement"), a copy of which is attached hereto as Exhibit A, and Customer has granted to Secured Party a security interest in the Securities Account and all financial assets and other property now or at any time hereafter held in the Securities Account

B Secured Party Customer and Intermediary have agreed to enter into this Agreement to perfect Secured Party s security interests in the Collateral as defined below

NOW THEREFORE, in consideration of their mutual covenants and promises, the parties agree as follows

1 DEFINITIONS As used herein

(a) the term "Collateral" shall mean (i) the Securities Account, (ii) all financial assets credited to the Securities Account; (iii) all security entitlements with respect to the financial assets credited to the Securities Account, (iv) any and all other investment property or assets maintained or recorded in the Securities Account, and (v) all replacements or substitutions for and proceeds of the sale or other disposition of, any of the foregoing including without limitation, cash proceeds, and

(b) the terms "investment property," "entitlement order," "financial asset" and "security entitlement' shall have the respective meanings set forth in the New York Uniform Commercial Code The parties hereby expressly agree that all property, including without limitation, cash certificates of deposit and mutual funds at any time held in the Securities Account is to be treated as a "financial asset "

(c) all references herein to the "UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York

2 AGREEMENT FOR CONTROL Intermediary is authorized by Customer and agrees to comply with all entitlement orders originated by Secured Party with respect to the Securities Account, and all other requests or instructions from Secured Party regarding disposition and/or delivery of the Collateral, without further consent or direction from Customer or any other party

3 CUSTOMER'S RIGHTS WITH RESPECT TO THE COLLATERAL

(a) Until Intermediary is notified otherwise by Secured Party (i) Customer or any party authorized by Customer to act with respect to the Securities Account, may give trading instructions to Intermediary with respect to Collateral in the Securities Account, and (ii) Intermediary may distribute to Customer or any other party in accordance with Customer's directions that portion of the Collateral which consists of interest and/or cash dividends earned on financial assets maintained in the Securities Account

(b) Without Secured Party's prior written consent, except to the extent permitted by Section 3(a) hereof (i) neither Customer nor any party other than Secured Party may withdraw any Collateral from the Securities Account, and (ii) Intermediary will not comply with any entitlement order or request to withdraw any Collateral from the Securities Account given by any party other than Secured Party

(c) Upon receipt of either written or oral notice from Secured Party (i) Intermediary shall promptly cease complying with entitlement orders and other instructions concerning the Collateral including the Securities Account, from all parties other than Secured Party; and (ii) Intermediary shall not make any further distributions of any Collateral to any party other than Secured Party nor permit any further voluntary changes in the financial assets

4 INTERMEDIARY'S REPRESENTATIONS AND WARRANTIES Intermediary represents and warrants to Secured Party that

(a) The Securities Account is maintained with Intermediary solely in Customer's name

(b) Intermediary has no knowledge of any claim to security interest in or lien upon any of the Collateral except (i) the security interests in favor of Secured Party and (ii) Intermediary's liens securing fees and charges, or payment for open trade commitments as described in Section 4(e) hereof

(c) Attached hereto as Exhibit A is a true and complete copy of the Investment Account Agreement

(d) Attached hereto as Exhibit B is an accurate and complete statement of the financial assets in the Securities Account as of the date set forth in said statement

(e) Any claim to security interest in or lien upon any of the Collateral which Intermediary now has or at any time hereafter acquires shall be junior and subordinate to the security interests of Secured Party in the Collateral, except for Intermediary's liens securing (i) fees and charges owed by Customer with respect to the operation of the Securities Account, and (ii) payment owed to Intermediary for open trade commitments for purchases in and for the Securities Account

(f) Intermediary hereby confirms that the Securities Account is a "securities account" as such term is defined in Article 8 of the UCC

5 AGREEMENTS OF INTERMEDIARY AND CUSTOMER Intermediary and Customer agree that

(a) Intermediary shall flag its books records and systems to reflect Secured Party's security interests in the Collateral and shall provide notice thereof to any party making inquiry as to Customer's accounts with Intermediary to whom or which Intermediary is legally required or permitted to provide information

(b) Intermediary shall send copies of all statements relating to the Securities Account simultaneously to Customer and Secured Party

(c) Intermediary shall promptly notify Secured Party if any other party asserts any claim to, security interest in or lien upon any of the Collateral and Intermediary shall not enter into any control, custodial or other similar agreement with any other party that would create or acknowledge the existence of any such other claim, security interest or lien

(d) Without Secured Party's prior written consent, Intermediary and Customer shall not amend or modify the Investment Account Agreement, other than amendments to reflect ordinary and reasonable changes in Intermediary's fees and charges for handling the Securities Account

(e) Neither Intermediary nor Customer shall terminate the Investment Account Agreement without giving thirty (30) days' prior written notice to Secured Party

6 AGREEMENT OF CUSTOMER Customer agrees to indemnify and hold harmless Intermediary its officers directors employees and agents, against claims, liabilities or expenses (including reasonable attorney's fees) in any way arising out of or relating to disputes or legal actions concerning this Agreement or arising out of Intermediary's compliance with any instructions from Secured Party with respect to the Securities Account, except if such claims liabilities or expenses are caused solely by Intermediary s gross negligence or willful misconduct

7 MISCELLANEOUS

(a) This Agreement shall not create any obligation or duty of Intermediary except as expressly set forth herein

(b) As to the matters specifically the subject of this Agreement in the event of any conflict between this Agreement and the Investment Account Agreement or any other agreement between Intermediary and Customer the terms of this Agreement shall control

(c) All notices, requests and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing (unless otherwise specifically provided) and delivered to each party at the address or facsimile number set forth below its signature, or to such other address or facsimile number as any party may designate by written notice to all other parties Each such notice request and demand shall be deemed given or made as follows (i) if sent by hand delivery, upon delivery (ii) if sent by facsimile upon receipt, and (iii) if sent by mail upon the earlier of the date of receipt or three (3) days after deposit in the U S mail, first class and postage prepaid

(d) The prevailing party in the prosecution or defense of any action arising out of this Agreement, including any action for declaratory relief, shall be reimbursed by the party whose course of action necessitated such prosecution or defense for all costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of the prevailing party's in-house counsel), expended or incurred by the prevailing party in connection therewith, whether incurred at the trial or appellate level in an arbitration proceeding, bankruptcy proceeding or otherwise

(e) This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators legal representatives, successors and assigns of the parties, provided however that Intermediary may not assign its obligations hereunder without Secured Party's prior written consent This Agreement may be amended or modified only in writing signed by all parties hereto

(f) This Agreement shall terminate upon (i) Intermediary's receipt of written notice from Secured Party expressly stating that Secured Party no longer claims any security interest in the Collateral, or (ii) termination of the Investment Account Agreement pursuant to Section 5(e) hereof and Intermediary's delivery of all Collateral to Secured Party or its designee in accordance with Secured Party's written instructions

(g) This Agreement shall be governed by and construed in accordance with the laws of the State of New York Regardless of any provision in any other agreement for purposes of the UCC, New York shall be deemed to be Intermediary's jurisdiction and the Securities Account shall be governed by the law of the State of New York

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above

INTERMEDIARY

WELLS FARGO BANK MINNESOTA, N A
By Albert Aderhold
Title Vice President
Address
4475 Executive Drive 2nd Floor
San Diego CA 92121
FAX No 858-638-1462
Attention John Ferry

SECURED PARTY

CIBC WMC INC

By _____
Title _____
Address
425 Lexington Ave
New York, NY 10017
FAX No

CUSTOMER

By _____
Title _____
Address
12220 El Camino Real, Suite 400
San Diego, CA 92130
FAX No (858) 509-1353

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first set forth above

INTERMEDIARY

WELLS FARGO BANK MINNESOTA, N.A.

By _____
Title _____
Address
_____
_____
FAX No _____

CUSTOMER.

By _____
Title. _____
Address
12220 El Camino Real Suite 400
San Diego CA 92130
FAX No (858) 509-1353

SECURED PARTY

CIBC WMC INC

By _____
Title Managing Director
Address
425 Lexington Ave
New York, NY 10017
FAX No 212-885-4927

MAY 15 2003 08 34 FR CIBC WORLD MKTS TO 912123782410 P 02

NOTICE TO BAILEE OF SECURITY INTEREST IN INVENTORY

CERTIFIED MAIL — RETURN RECEIPT REQUESTED

May 12, 2003

TO Ruspak Corporation
P O Box 29
Manhattan Street
Lyons, NY 14489

Re Women First HealthCare, Inc

Ladies and Gentlemen

In connection with that certain Security Agreement, dated as of May 12, 2003 (the "Security Agreement"), made by Women First HealthCare, Inc and each of the guarantors from time to time party thereto (the "Guarantors" and together with the Company, the "Issuers"), in favor of CIBC WMC Inc as Collateral Agent for the benefit of the Secured Parties (as such terms are defined in the Security Agreement) , we have granted to the Secured Parties a security interest in substantially all of our personal property, including our inventory

This letter constitutes notice to you, and your signature below will constitute your acknowledgment, of the Secured Parties' continuing security interest in all goods with respect to which you are acting as bailee Until you are notified to the contrary by CIBC WMC, Inc , however, you may continue to accept instructions from us regarding the delivery of goods stored by you

Your acknowledgment also constitutes a waiver and release, for the Secured Parties' benefit, of any and all claims, liens, including bailee's liens, and demands of every kind which you have or may later have against such property (including, without limitation, any right to include such property in any secured financing to which you may become party)

In order to complete our records, kindly have a duplicate of this letter signed by an officer of your company and return same to us at your earliest convenience

Receipt acknowledged, confirmed and approved

RUSPAK CORPORATION

By _____
Name
Title

Very truly yours,

WOMEN FIRST HEALTHCARE, INC

By _____
Name Charles M Caporale
Title Vice President, Chief Financial Officer, Secretary and Treasurer

cc CIBC WMC, Inc

PLEDGE AMENDMENT

This Pledge Amendment, dated as of May 12, 2003, is delivered pursuant to Section 5 1 of that certain security agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement", capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Security Agreement), dated as of May 12, 2003, made by WOMEN FIRST HEALTHCARE, INC , a Delaware corporation (the "Company'), and the GUARANTORS listed on the signature pages thereto or from time to time party thereto by execution of a joinder agreement (the "Guarantors"), as pledgors, assignors and debtors (the Company, together with the Guarantors, in such capacities and together with any successors in such capacities, the "Issuers," and each, a "Issuer"), in favor of CIBC WMC, INC , in its capacity as collateral agent pursuant to the Security Agreement, as pledge, assignee and secured party (in such capacities and together with any successors in such capacities, the "Collateral Agent") The undersigned hereby agrees that this Pledge Amendment may be attached to the Security Agreement and that the Pledged Securities and/or Intercompany Notes listed on this Pledge Amendment shall be deemed to be and shall become part of the Collateral and shall secure all Secured Obligations

PLEDGED SECURITIES

ISSUER	CLASS OF OR INTERESTS	PAR VALUE	CERTIFICATE NO(S)	NUMBER OF SHARES OR INTERESTS	PERCENTAGE OF ALL ISSUED CAPITAL OR OTHER EQUITY INTERESTS OF ISSUER
As We Change, L L C	Membership Interests	N/A	N/A (uncertificated)	100%	100%
Women First HealthCare Limited	Ordinary Shares	£0 10	1	1	65%

INTERCOMPANY NOTES

ISSUER	PRINCIPAL AMOUNT	DATE OF ISSUANCE	INTEREST RATE	MATURITY DATE
None				

Women First HealthCare, Inc ,
as Pledgor

By _____
Name Charles M Caporale
Title Vice President, Chief Financial Officer, Secretary and Treasurer

AGREED TO AND ACCEPTED

CIBC WMC, Inc , as Collateral Agent

By _____
Name
Title

INTERCOMPANY NOTES

ISSUER	PRINCIPAL AMOUNT	DATE OF ISSUANCE	INTEREST RATE	MATURITY DATE
None				

Women First HealthCare, Inc.,
as Pledgor

By _____
Name Charles M. Caporale
Title Vice President, Chief Financial Officer, Secretary and Treasurer

AGREED TO AND ACCEPTED

CIBC WMC, Inc., as Collateral Agent

By _____
Name William D Phoenix
Title Managing Director

EXHIBIT 5

[Form of Joinder Agreement]

Reference is made to the Securities Purchase Agreement (as defined in the Security Agreement)

WITNESSETH

WHEREAS, the Guarantors have entered into the Guarantee Agreement and the Security Agreement in order to induce the Purchasers (as defined in the Securities Purchase Agreement) to enter into Amendment No 1 to the Securities Purchase Agreement to or for the benefit of the Company,

WHEREAS, each Guarantor will derive substantial direct and indirect benefit from the transactions contemplated by the Securities Purchase Agreement and the Security Documents, which benefit is hereby acknowledged,

WHEREAS, pursuant to Section 19 of the Guarantee Agreement and Section 3 5 of the Security Agreement, each Subsidiary listed on the signature pages to the Securities Purchase Agreement and each other Subsidiary that was not in existence on the date of the Guarantee Agreement is required to become a Guarantor under the Guarantee Agreement and a Guarantor and Issuer under the Security Agreement by executing a Joinder Agreement The undersigned Company (the "New Guarantor") is executing this joinder agreement ("Joinder Agreement") to the Purchase Agreements and the Security Agreement as consideration for the Securities Purchase Agreement previously entered into

NOW, THEREFORE, based upon the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Purchasers to enter into the Securities Purchase Agreement, Collateral Agent and New Guarantor hereby agree as follows

Guarantee In accordance with Section 19 of the Guarantee Agreement and Section 3 5 of the Security Agreement, the New Guarantor by its signature below becomes a Guarantor under the Securities Purchase Agreement and a Guarantor and Issuer under the Security Agreement with the same force and effect as if originally named therein as a Guarantor and a Guarantor and Issuer

Representations and Warranties The New Guarantor hereby (a) agrees to all the terms and provisions of the Securities Purchase Agreement, Guarantee Agreement and the Security Agreement applicable to it as a Guarantor and a Guarantor and Issuer, respectively, thereunder and (b) represents and warrants that the representations and warranties made by it as a Guarantor and a Guarantor and Issuer, respectively thereunder are true and correct in all material

respects (except that any representation and warranty that is qualified as to "materiality" or "Material Adverse Effect" shall be true and correct in all respects) on and as of the date hereof Each reference to a Guarantor in the Guarantee Agreement shall be deemed to include the New Guarantor

Severability Any provision of this Joinder Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction

Counterparts This Joinder Agreement may be executed in counterparts, each of which shall constitute an original Delivery of an executed signature page to this Joinder Agreement by facsimile transmission shall be as effective as delivery of a manually executed counterpart of this Joinder Agreement

No Waiver Except as expressly supplement hereby, the Securities Purchase Agreement and the Security Agreement shall remain in full force and effect

Notices All notices, requests and demands to or upon the New Guarantor, any Agent or any Purchaser shall be governed by the terms of Paragraph 11I of the Securities Purchase Agreement

Governing Law THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned has caused this Joinder Agreement to be duly executed and delivered by its duly authorized officer as of the day and year first above written

[NEW GUARANTOR]

By _____
Name
Title

Address for Notices

CIBC WMC INC , as Collateral Agent

By _____
Name
Title

By _____
Name
Title

RECYCLED

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re	)	
	)	Chapter 11
WOMEN FIRST HEALTHCARE, INC ,	)	
	)	Case No 04-11278(MFW)
Debtor	)	
	)	Re Docket Nos 13, 145

AMENDED FINAL ORDER (1) AUTHORIZING POST-PETITION FINANCING ON A SECURED AND SUPER-PRIORITY BASIS PURSUANT TO SECTIONS 364(c) AND (d) OF THE BANKRUPTCY CODE, (2) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE AND (3) GRANTING ADEQUATE PROTECTION PURSUANT TO SECTIONS 363 AND 364 OF THE BANKRUPTCY CODE

Women First HealthCare, Inc. ("Women First"), a Delaware corporation, as debtor and debtor-in-possession in the above-captioned case ("Debtor"), having filed with this Court a voluntary petition ("Petition") for relief under chapter 11 of title 11 of the United States Code, 11 U S C §§ 101, et seq (the "Code"), in the United States Bankruptcy Court for the District of Delaware on April 29, 2004 (the "Petition Date"), and having filed a Motion on the Petition Date pursuant to sections 364(c) and (d) of the Code (the "Motion") for entry of interim and final orders, inter alia

(A) Authorizing the Debtor to borrow, on a secured credit basis from CIBC WMC Inc and Whitney Private Debt Fund (together, the "DIP Lenders"), an amount not to exceed $1 25 million on an interim basis and $3 million on a final basis

(the "DIP Facility"), pursuant to the terms of this Order and the attached agreed upon terms and conditions (collectively, the "DIP Loan Terms and Conditions") between the Debtor, the DIP Lenders and CIBC WMC Inc , as agent for the DIP Lenders (in such, capacity, the "DIP Agent"),

(B) Authorizing and directing the Debtor to execute and deliver, from time to time, all such documents, instruments and agreements and perform all such other acts as may be required in connection with the DIP Loan Terms and Conditions,

(C) Authorizing, subject to the terms, conditions and limitations set forth herein, under sections 364(c)(1), (c)(2), (c)(3) and (d) of the Code, the Debtor to obtain post-petition financing under the DIP Facility (all such financing, loans, extensions of credit, and other indebtedness, including interest and fees in connection therewith, shall hereinafter be referred to as the "Post-Petition Advances"), which financing and indebtedness, due and owing by the Debtor to the DIP Lenders, shall (a) pursuant to section 364(c)(1) of the Code, have priority over any and all administrative expenses of the kind specified in or created or awarded pursuant to, inter alia, sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b) and 726 of the Code, subject only to the Carve-Out, the Professional Fee Reserve and the Professional Fee Carve-Out (as defined below) but which super-priority claim shall not be payable from the proceeds of Avoidance Actions (hereinafter defined) but which shall share pro rata with all other administrative expenses in the proceeds of Avoidance Actions (hereinafter defined), (b) pursuant to section 364(c)(2) of the Code, be secured by a first priority fully perfected lien on property of the Debtor (other than Avoidance Actions (hereinafter defined)) not otherwise subject to a lien, subject, only to the Carve-Out, the Professional Fee Reserve

and the Professional Fee Carve-Out, (c) pursuant to section 364 (c)(3) of the Code, be secured by a fully perfected lien in all property of the Debtor that is otherwise subject to an Existing Lien (as defined below) (other than the Pre-Petition Agent's Liens (as defined below)) which security interest shall be junior in priority to such valid and non-avoidable Existing Liens to the extent provided under applicable non-bankruptcy law and subject to the Carve-Out, the Professional Fee Reserve and the Professional Fee Carve-Out and (d) pursuant to section 364(d)(1) of the Code, be secured by a first priority priming lien on and security interest in all Pre-Petition Collateral (as defined below), senior in priority to the Pre-Petition Agent's Liens on certain property and pari passu on other property, but subject to other Existing Liens, the Carve-Out, the Professional Fee Reserve and the Professional Fee Carve-Out (such property of the Debtor referred to in (a) though (d) the "DIP Collateral"),

(D) Authorizing the use of Cash Collateral (hereinafter defined) pursuant to section 363 of the Code, to the extent necessary to fund the Budgeted Expenses (hereinafter defined) including making adequate protection payments to the Pre-Petition Lenders (as defined below), and the granting of replacement liens as adequate protection to the Pre-Petition Lenders,

(E) Modifying the automatic stay imposed by section 362 of the Code to the extent reasonably necessary to permit the DIP Agent, the DIP Lenders and the Debtor to implement the terms of this Order,

(F) Authorizing the Debtor, after an interim hearing on the Motion, to obtain from the DIP Lenders interim financing up to $1 25 million and to otherwise

enable the Debtor to pay the expenses set forth in the Budget (as defined below), pending the final hearing on the Motion in accordance with Fed R Bankr P 4001(b) and (c), and

(G) Granting the Debtor such other and further relief as the Court deems necessary, appropriate, equitable, proper, and consistent with the terms of this Order, and

Pursuant to Fed R Bankr P. 4001(c), following sufficient notice of the interim hearing by the Debtor and upon the record of the hearing on May 3, 2004, and the Court finding that each of the conditions set forth in section 364 of the Code has been satisfied and the Debtor having established an emergency need for interim post-petition financing, the Court on May 3, 2004 entered its Interim Order (1) Authorizing Post-Petition Financing on a Secured and Super-Priority Basis Pursuant to Sections 364(c) and (d) of the Bankruptcy Code, (2) Authorizing Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (3) Granting Adequate Protection Pursuant to Sections 363 and 364 of the Bankruptcy Code and (4) Scheduling and Approving the Form and Method of Notice of the Hearing on the Debtor's Motion to Incur Such Financing on a Permanent Basis (the "Interim Order") From May 3, 2004 through the present date, in good faith upon the Interim Order, the DIP Lenders in fact made Post-Petition Advances (as defined hereinafter) to the Debtor, on a secured basis, and the Debtor incurred liability therefor, and

In compliance with the Court's directive under the Interim Order, the Debtor, in fact, gave adequate timely written notice to the parties designated under paragraph 32 of the Interim Order, as well as to Reed Smith, LLP, proposed counsel for the Official Committee of Unsecured Creditors (the "Creditors Committee") Following

such notice to creditors and parties-in-interest, certain objections were filed with the Court and, upon consideration of such objections, all such objections have been overruled, compromised or withdrawn, and

It appearing to this Court that the relief requested in the Motion is in the best interests of the Debtor and its creditors and is essential for the continued operation of its business, and it further appearing that the Debtor is unable to obtain unsecured credit for money borrowed allowable as an administrative expense under section 503(b)(1) of the Code or on terms more favorable than those set forth in this Order and the DIP Loan Terms and Conditions (after taking into account, among other things, the amount of adequate protection that would be required to prime the Pre-Petition Lenders – assuming it would be feasible under any circumstances to do so), and it appearing that each of the conditions set forth in section 364 of the Code for the authorization of debtor-in-possession financing on a priming lien basis as specifically set forth herein has been satisfied, and due deliberation having been had and sufficient cause appearing therefor

THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:

A On April 29, 2004 (the "Petition Date"), the Debtor filed a voluntary petition under chapter 11 of the Code

B The Debtor has continued in the management and operation of its business and property as a debtor in possession under sections 1107 and 1108 of the Code No trustee or examiner has been appointed in this chapter 11 case An official committee of unsecured creditors (the "Creditors Committee") was appointed in this case on May 11, 2004

C Without prejudice to the rights, if any, of any other party in interest (including, without limitation, the Creditors Committee) to object to, challenge or dispute the validity and extent of the Pre-Petition Obligations and/or the perfection or validity of the Pre-Petition Agent's Liens or to bring any other claim it may have against the Pre-Petition Lenders or the Pre-Petition Agent, as the case may be, but subject to the Review Period (hereinafter defined), the Debtor and the DIP Lenders stipulate that, prior to the Petition Date

(1) CIBC WMC Inc , Whitney Private Debt Fund and J H Whitney Mezzanine Fund, L P (the "Pre-Petition Lenders") and Women First are parties to that certain Note and Warrant Purchase Agreement dated as of June 25, 2002 (as amended from time to time, and collectively with its related agreements, the "Pre-Petition Agreement"), pursuant to which the Pre-Petition Lenders have made loans to Women First, the payment of which was unconditionally guaranteed by its wholly owned subsidiary, As We Change LLC As of the Petition Date, the Debtor was indebted to the Pre-Petition Lenders for obligations in respect of such loans totaling not less than $29 1 million[1] in principal, accrued interest, fees and costs, including professional fees and costs All obligations arising under or evidenced by the Pre-Petition Agreement and the instruments and documents executed in connection with such agreement shall hereinafter be referred to as the "Pre-Petition Obligations."

(2) As security for the Pre-Petition Obligations, the Debtor granted to CIBC WMC, Inc , as collateral agent (in such capacity, the "Pre-Petition

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1 Such amount does not include obligations owed to the Pre-Petition Lenders as of April 21, 2004 of not less than $8,541,145 with respect to the Preferred Stock of the Debtor held by them.

Agent"), for the ratable benefit of the Pre-Petition Lenders, security interests in and liens upon, among other property, certain of the Debtor's then-owned and thereafter acquired property and interests in property as more specifically set forth in the Amended and Restated Security Agreement dated May 12, 2003 (the "Amended and Restated Security Agreement"), and other documents executed in connection with the Pre-Petition Agreement (the "Pre-Petition Agent's Liens") The Pre-Petition Agent's Liens are duly perfected liens and security interests granted to them by the Debtor through the filing and recordation of financing statements and other appropriate documents and instruments in the relevant jurisdictions, including recordation of notices of security interests in the United States Patent and Trademark Office The Pre-Petition Agreement and the documents executed in connection therewith including, without limitation, the Amended and Restated Security Agreement, shall hereinafter be referred to as the "Pre-Petition Loan Documents " The property subject to the liens and security interests described in this paragraph C(2) shall hereinafter be referred to as the "Pre-Petition Collateral "[2]

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[2] Wyeth alleges a first-priority security interest in and lien upon certain assets of the Debtor related to the Equagesic®, Synalgos®, and Wygesic® product lines and the proceeds of those assets (the "Wyeth Collateral") The assets which make up the Wyeth Collateral also make up a portion of the Pre-Petition Second Lien Collateral. For the avoidance of any doubt whatsoever, the Wyeth Collateral does not extend to, or include, any of the Debtor's right, title and interest in and to Debtor's Vaniqa product rights or any of the "Acquired Assets" under, and as defined in, that certain Asset Purchase Agreement for Vaniqa, dated as of April 29, 2004, between Women First Healthcare, Inc , as Seller, and Skinmedica, Inc , or its designee as Purchaser (a copy of which was attached to the Debtor's Motion for Order (i) Approving Bidding Procedures with Respect to the Sale of the Debtor's Vaniqa Assets, (ii) Approving Break-Up Fee and Expense Reimbursement, (iii) Establishing Deadline by which Parties may Object to Proposed Assumption and/or Assignment of Assumed Contracts and Assert Claims for Cure Amounts, (iv) Approving Form and Manner of Notice of Sale, and (v) Scheduling Auction and Final Hearing on Approval of Asset Sale (Docket No 24) (the "Vaniqa APA")

(3) The Debtor acknowledges and agrees that any cash proceeds of the Pre-Petition Collateral constitutes cash collateral of the Pre-Petition Lenders within the meaning of section 363(a) of the Code (the "Cash Collateral") Consequently, the Debtor acknowledges and agrees that the Pre-Petition Lenders are entitled, pursuant to sections 361 and 363(e) of the Code, to adequate protection of their interests in the Pre-Petition Collateral (including such Cash Collateral), including for the priming of the Pre-Petition Lenders' liens on the Pre-Petition Collateral as described in paragraph 8 below, the use of the Cash Collateral, the use, sale or lease of the Pre-Petition Collateral (other than the Cash Collateral), and the imposition of the automatic stay.

D Without prejudice to the rights, if any, of any other party in interest (including, without limitation, the Creditors Committee) to object to, challenge or dispute the validity and extent of the Pre-Petition Obligations and/or the perfection or validity of the Pre-Petition Agent's Liens or to bring any other claim it may have against the Pre-Petition Lenders or the Pre-Petition Agent, as the case may be, but subject to the Review Period (hereinafter defined), the Debtor, the DIP Agent and the DIP Lenders stipulate that the DIP Loan Terms and Conditions set forth on Exhibit 1 are the agreed upon terms pursuant to which the Debtor agrees to borrow, and the DIP Lenders agree to lend, amounts under the DIP Facility, and shall, together with this Order govern the respective rights of the Debtor, the DIP Agent and the DIP Lenders with respect to the DIP Facility. Subject to paragraphs 13 and 14 of this Order, the Pre-Petition Lenders consent to the entry of this Order and the DIP Loan Terms and Conditions, provided that if there exists

an inconsistency between the terms of this Order and the DIP Loan Terms and Conditions this Order shall be controlling

E The Debtor has provided adequate notice of the Motion and the entry of the Interim Order and the Final Hearing on the Motion to (i) the DIP Agent and the DIP Lenders and the Pre-Petition Agent and the Pre-Petition Lenders, (ii) the Office of the United States Trustee for the District of Delaware, (iii) all parties who have filed requests for notice under Bankruptcy Rule 2002 on or about May 3, 2004, (iv) the Debtor's twenty (20) largest unsecured creditors at their respective last known addresses, (v) all parties known by the Debtor to have liens on or security interests in the Debtor's assets, (vi) the Internal Revenue Service, (vii) Lessors and Licensors that are the subject of the relief sought in paragraph 27 of this Order and (viii) the Securities and Exchange Commission The foregoing notice was appropriate and sufficient under the circumstances pursuant to sections 102(1), 364(c) and 364(d) of the Code, Fed R Bankr P 2002 and 4001(c), and applicable local rules

F This Court has jurisdiction over this case and the parties and property affected hereby pursuant to 28 U S C §§ 157(b)(2)(D) and 1334 The subject of this Order is a "core" proceeding within the meaning of 28 U S C § 157

G The Creditors Committee selected Reed Smith LLP to represent it in this case Reed Smith LLP is in the process of preparing its application to be officially appointed Creditors Committee counsel in this case Reed Smith LLP has reviewed the Motion and appeared at the final hearing thereon

H Since the Petition Date, an emergency need has existed for the Debtor to obtain immediate financing in order to facilitate the orderly wind-down of the

Debtor's operations and payment of administrative expenses in this proceeding The Debtor's operating cash flow is not sufficient for the payment of, inter alia, wages, salaries and other expenses (including the compensation and reimbursement of expenses of such professionals as the Debtor may, with prior approval of the Court, retain) necessary to preserve its assets and maximize value during the liquidation process The value of the Debtor's assets would have been irreparably harmed unless the Debtor had been authorized under the Interim Order to obtain financing on the terms and conditions set forth therein The interim financing approved pursuant to the Interim Order was limited to the amount necessary to avoid immediate and irreparable harm to the Debtor and its estate

I The Debtor is presently unable to obtain, in the ordinary course of business or otherwise, unsecured credit allowable under sections 364(a) or 364(b) of the Code, or secured credit pursuant to sections 364(c) or 364(d) of the Code on more favorable terms than that offered by the DIP Lenders and the terms and conditions contained in this Order The DIP Agent and the DIP Lenders have indicated a willingness to provide the Debtor with certain Post-Petition Advances as contemplated herein, but solely on the terms and conditions set forth in this Order and the DIP Loan Terms and Conditions After considering all of the alternatives, the Debtor has concluded, in the exercise of its best and reasonable business judgment, that the financing to be provided by the DIP Lenders under the terms of this Order and the DIP Loan Terms and Conditions represent the best financing available to the Debtor under the circumstances (after taking into account, among other things, the amount of adequate

protection that would be required to prime the Pre-Petition Lenders – assuming it would be feasible under any circumstances to do so)

J Without prejudice to the rights, if any, of any other party in interest (including, without limitation, the Creditors Committee) to object to, challenge or dispute the validity and extent of the Pre-Petition Obligations and/or the perfection or validity of the Pre-Petition Agent's Liens or to bring any other claim it may have against the Pre-Petition Lenders or the Pre-Petition Agent, as the case may be, but subject to the Review Period (hereinafter defined), the Debtor admits that it is truly and justly indebted to the Pre-Petition Lenders without defense, counterclaim, or offset of any kind, and that as of the Petition Date it was indebted and liable to the Pre-Petition Lenders in the aggregate amount of not less than $29 1 million in respect of loans and other financial accommodations made by the Pre-Petition Lenders to the Debtor pursuant to the Pre-Petition Loan Documents, accrued and unpaid interest thereon, and fees, costs and expenses payable pursuant to the Pre-Petition Loan Documents.[3]

K The security interests and liens granted in this Order to the DIP Agent, for the ratable benefit of the DIP Lenders, including the security interests and liens granted in paragraph 8 below, do not impair the valid, perfected, pre-petition security interests and liens, if any, of any holder (other than the liens of the Pre-Petition Agent, who is being provided adequate protection on the terms set forth herein) of such a security interest or lien in the property of the estate created by the filing of the Petition

L Without prejudice to the rights, if any, of any other party in interest (including, without limitation, the Creditors Committee) to object to, challenge or dispute

the validity, priority, and perfection of the Pre-Petition Agent's Liens on the Pre-Petition Collateral or to bring any other claim it may have against the Pre-Petition Lenders or the Pre-Petition Agent, as the case may be, but subject to the Review Period, the Debtor admits and stipulates that, by reason of the Pre-Petition Loan Documents, the Pre-Petition Obligations are secured by (i) first-priority, non-avoidable, perfected, valid and enforceable liens on and security interests in all of the Debtor's right, title and interest in and to the Pre-Petition Collateral, including, without limitation, the following categories of Pre-Petition Collateral set forth in section 2 1 of the Amended and Restated Security Agreement all accounts, all equipment, goods, inventory and fixtures, all documents, instruments and chattel paper, all letter of credit rights, all investment property, all intellectual property, commercial tort claims, all general intangibles, all deposit accounts, all books and records, all marketing materials, all regulatory documentation, all personal property, whether tangible or intangible, and all proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and profits and products of, each of the foregoing, any and all proceeds of any insurance, indemnity, warranty or guaranty payable from time to time with respect to any of the foregoing, but excluding any and all Excluded Property and assets and personal property which constitute Second Lien Collateral (as defined in the Amended and Restated Security Agreement), and (b) second and junior priority, non-avoidable, perfected, valid and enforceable liens on and security interests in all of the Debtor's right, title and interest in and to certain of the Pre-Petition Collateral as set forth in section 2 2 of the Amended and Restated Security Agreement, including, without limitation all intellectual property

[3] Such amount does not include obligations owed to the Pre-Petition Lenders as of April 21, 2004 of not

exclusively related to or used only in connection with all rights and interests held by Women First related to Synalgos, Wygesic and Equagesic (the "Pre-Petition Second Lien Collateral"), commercial tort claims exclusively related to or used only in connection with the Pre-Petition Second Lien Collateral, all general intangibles exclusively related to or used only in connection with the Pre-Petition Second Lien Collateral, all books and records exclusively related to or used only in connection with the Pre-Petition Second Lien Collateral, all marketing materials exclusively related to or used only in connection with the Pre-Petition Second Lien Collateral, all regulatory documentation exclusively related to or used in connection with the Pre-Petition Second Lien Collateral, all personal property exclusively related to or used only in connection with the Pre-Petition Second Lien Collateral, whether tangible or intangible, and all proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and profits and products of, each of the foregoing, any and all proceeds of any insurance, indemnity, warranty or guaranty payable from time to time with respect to any of the foregoing, but excluding any and all Excluded Property and the assets and personal property which constitute the Pledged Collateral

M Good cause had been shown for the entry of the Interim Order pursuant to Fed R Bankr P 4001(c)(2) In particular, the permission granted in the Interim Order to obtain interim financing on a priming lien basis thereunder was necessary to avoid immediate and irreparable harm to the Debtor and its assets The findings, terms and provisions of the Interim Order (except to the extent expressly modified or superseded by the terms of this Order and except as to those findings and

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less than $8,541,145 with respect to the Preferred Stock of the Debtor held by them.

conclusions which are not binding upon any third party or the Creditors Committee by virtue of this Order unless and until certain conditions exist as set forth in paragraph 21 herein) are hereby ratified and reaffirmed, made final and incorporated into this Order Entry of this Order is in the best interest of the Debtor and its creditors and estate The terms of the post-petition financing authorized hereby, including the DIP Loan Terms and Conditions, are fair and reasonable under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duty, and are supported by reasonably equivalent value and fair consideration

N As set forth in the Motion and based upon the record of this proceeding, the DIP Agent, the DIP Lenders, the Creditors Committee, the Pre-Petition Agent, the Pre-Petition Lenders and the Debtor have negotiated the terms and conditions of this Order and the DIP Loan Terms and Conditions in good faith and at arm's-length, and any credit extended by the DIP Lenders on or after the Petition Date pursuant to the terms of this Order, shall be and hereby is, deemed to have been extended in "good faith" for purposes of section 364(e) of the Code

BASED ON THE FOREGOING, IT IS HEREBY ADJUDGED, ORDERED AND DECREED.

Approval

1 Record, Findings. The record in this case, as well as the findings of fact and conclusions of law set forth above (including any qualifications regarding the Creditors Committee's rights), are incorporated herein by this reference

2 Final Approval, Binding Effect of Order The Debtor's Motion shall be and hereby is approved on a final basis, subject to the terms and conditions set forth in this Order and the DIP Loan Terms and Conditions This Order shall constitute and evidence the valid and binding Post-Petition Obligations of the Debtor, which obligations shall be fully enforceable against the Debtor in accordance with the DIP Loan Terms and Conditions and the terms of this Order

3 Further Performance Subject to the terms and conditions contained in this Order, the Debtor is hereby expressly authorized and directed to execute and deliver to the DIP Lenders, as applicable, any such additional documents, instruments, and agreements as may be reasonably required by the DIP Agent or the DIP Lenders to implement the terms or effectuate the purposes of this Order or the DIP Loan Terms and Conditions, and is hereby approved by the Court The Debtor is authorized and directed to comply with and perform all of the terms and conditions contained in this Order and the DIP Loan Terms and Conditions

4 Approval of Borrowings Without limiting the foregoing, the Debtor is hereby authorized to borrow Post-Petition Advances up to the aggregate principal amount of $3 0 million outstanding at any one time (the "Commitment") pursuant to the terms of the DIP Loan Terms and Conditions and this Order Further, the Debtor is authorized to use Cash Collateral on the terms set forth herein and in the DIP Loan Terms and Conditions to the extent required to pay any and all Budgeted Expenses,

notwithstanding that the Budgeted Expenses exceed the Commitment and the Budget is for a period which extends beyond the Termination Date but only for the term of the Budget

Payment of Post-Petition Obligations

5 Approval of Payment of Fees and Expenses The Debtor is hereby authorized to pay out of the DIP Facility (and to the extent that the DIP Facility is insufficient, the Cash Collateral) all fees, expenses and other amounts which may be required or necessary for its performance under the terms of this Order, including, without limitation, a facility fee of $200,000, and all reasonable attorneys' fees and related costs and expenses incurred by the DIP Agent and the DIP Lenders, including those relating to the negotiation, documentation and administration of the DIP Facility and the protection and enforcement of the DIP Agents and the DIP Lenders' rights under, in respect of and in accordance with the DIP Loan Terms and Conditions

6 Interest, Post-Petition Indebtedness All loans made to the Debtor on or after the Petition Date under the DIP Facility and interest thereon, and all fees, costs, expenses, indebtedness, obligations and other liabilities arising or incurred on or after the Petition Date and owing by the Debtor to the DIP Lenders under the DIP Facility and this Order shall hereinafter be referred to as the "Post-Petition Indebtedness " Post-Petition Indebtedness and Post-Petition Advances (i) shall be evidenced by the books and records of the DIP Agent or the DIP Lenders (absent inaccuracies); (ii) shall bear interest (which shall be payable monthly on the first day of each month in arrears) at the rate of 15% per annum; (iii) shall be secured in the manner specified in paragraph 8 below, and (iv) shall comply with and otherwise be governed by the terms as set forth in this Order and the DIP Loan Terms and Conditions

7 Budget Subject to the DIP Loan Terms and Conditions and the terms and conditions contained in this Order, the Debtor may use Post-Petition Advances to (i) fund expenses (the "Budgeted Expenses") as provided for in the Budget (as defined below) in accordance with the weekly cumulative amounts set forth in the budget attached hereto as Exhibit 2 (as amended, extended or superseded from time to time in accordance with this Order, the "Budget") for the then current week (subject to a 15% variance in the category "Disbursements," on a weekly and cumulative basis during the Budget period), (ii) to the extent approved by the Court, to pay fees and expenses, as approved on an interim or final basis, of professionals employed by the Debtor or the Creditors Committee, and fees payable to the United States Trustee, (iii) to fund the Professional Fee Reserve and the Professional Fee Carve-Out (as defined below) and (iv) to pay (x) all interest, fees, expenses and such other amounts as provided under this Order, and (y) all reasonable professional fees and expenses (including legal, financial advisor, appraisal and valuation related fees and expenses) incurred by the DIP Agent and the DIP Lenders as provided under this Order, including those incurred in connection with the preparation, negotiation and documentation of the DIP Facility (whether incurred before or after the Petition Date) provided that the aggregate amount of Post-Petition Indebtedness which may be outstanding at any time may not, absent further order of this Court, exceed the Commitment. Notwithstanding the limitation on the Post-Petition Indebtedness set forth in the preceding sentence, the Debtor is authorized to use the proceeds from the sale or collection of Cash Collateral to fund Budgeted Expenses to the extent provided herein The Debtor is authorized and directed to provide the DIP Agent, the DIP Lenders and the Creditors Committee counsel, with (i) not later than the

Thursday of each week, an updated version of the Budget, in form and substance reasonably satisfactory to the DIP Agent, reflecting on a line-item basis anticipated weekly cash receipts and expenditures for the following week, and (ii) not later than Thursday of each week as of the prior Saturday (a) the actual financial results compared to the Budget on which date the Debtor must certify that each requested advance is consistent with and for a purpose permitted under the Budget and (b) a variance report (the "Variance Report") reflecting on a line-item basis the actual cash receipts and disbursements for the preceding week and the percentage variance of such actual results from those reflected in the Budget for the preceding week, and a written explanation of such variance The Budget may be modified from time to time, without Court approval, subject to the approval of the Debtor, the DIP Lenders and the Creditors Committee Subject to the DIP Loan Terms and Conditions and in the absence of any Event of Default (as defined herein), the Debtor shall have continuing authority to borrow Post-Petition Advances and to use the proceeds from Cash Collateral, but only on the conditions set forth in this Order

Collateral Security; Priority Administrative Claims

8 Superpriority, Carve-Out, Professional Fee Reserve, Professional Fee Carve-Out As security for the full and timely payment of the Post-Petition Indebtedness and the timely performance of each of the other obligations owing by the Debtor on or after the Petition Date under the DIP Facility, the DIP Agent, subject, subordinate and junior in all respects, including priority, to the Carve-Out, Professional Fee Reserve and Professional Fee Carve-Out (defined below), for the ratable benefit of the DIP Lenders, is hereby granted·

(a) Pursuant to section 364(c)(2) of the Code, a perfected first priority lien on all unencumbered property and interests, real and personal, tangible and intangible, of the Debtor, whether now owned or hereafter acquired, all products and proceeds thereof, and accessions thereto, including, without limitation, all of the Debtor's rights and interests, if any, in and under that certain Distribution and License Agreement between Women First Healthcare, Inc and Laboratories Fournier S A dated July 19, 1999 (as amended from time to time), all inventory, accounts receivable, general intangibles, equipment, notes, documents, chattel paper, cash and interests in real property (whether owned or leased), but excluding any and all Avoidance Actions (as defined below) or the proceeds therefrom,

(b) Subject to subparagraph (c) below, pursuant to section 364(c)(3) of the Code, a perfected junior lien on all property of the Debtor which lien shall be subject only to liens (other than the Pre-Petition Agent's Liens) in existence on the Petition Date and which are properly perfected, valid, enforceable and non-avoidable as of the Petition Date (the "Existing Liens"), and

(c) Pursuant to section 364(d)(1) of the Code, a perfected first priority, senior priming lien on the pre-petition collateral that is subject to the first priority existing liens that secure the obligations of the Debtor to the Pre-Petition Lenders under or in connection with the Pre-Petition Agreement, all of which existing liens (the "Primed Liens") shall be primed by and made subject and subordinate to the perfected first priority senior liens to be granted to the DIP Agent on behalf of the DIP Lenders, which senior priming liens in favor of the DIP Agent shall also prime any liens granted after the commencement of this case to provide adequate protection in respect of any of the

Primed Liens but shall not prime Existing Liens In addition, the DIP Facility shall be secured by a perfected junior lien on all property of the Debtor that is subject to Existing Liens, ranking equal in priority to any junior existing liens on the Pre-Petition Collateral that secure the obligations of the Debtor under or in connection with the Pre-Petition Agreement

9 Automatic Perfection The security interests and liens herein granted in the DIP Collateral (i) shall be subject only to (x) the Existing Liens to the extent provided in paragraph 8 above and (y) the Carve-Out, the Professional Fee Reserve and the Professional Fee Carve-Out, (ii) shall be senior to the Pre-Petition Agent's Liens, (iii) shall not extend to any avoidance actions by the Debtor or its estate, including, without limitation, those arising under sections 544, 545, 547, 548, 549, 550 and 553 of the Code or the proceeds thereof (collectively, "Avoidance Actions"), and (iv) are and shall be valid, perfected, enforceable, non-avoidable and effective by operation of law as of the Petition Date without any further action by the Debtor, the DIP Agent, or the DIP Lenders and without the execution, filing, or recordation of any financing statements, security agreements, vehicle lien applications, mortgages, notices of security interests at the United States Patent and Trademark Offices, or other documents If the DIP Agent hereafter requests the Debtor to execute and deliver to the DIP Agent financing statements, security agreements, collateral assignments, mortgages, or other instruments or documents considered by the DIP Agent to be reasonably necessary or desirable to further evidence the perfection of the liens and security interests granted in this Order, the Debtor is hereby authorized and directed to execute and deliver those financing statements, security agreements, mortgages, collateral assignments,

instruments, and documents, and the DIP Agent is hereby authorized to file or record, in its sole discretion, such documents, provided that all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Order

10 Superpriority Status (a) In addition to the liens and security interests granted to the DIP Agent, for the ratable benefit of the DIP Lenders, pursuant to this Order, all of the Post-Petition Indebtedness (including, without limitation, all Post-Petition Advances) is hereby granted superpriority administrative expense status, in accordance with section 364(c)(1) of the Code, over any and all administrative expenses of the Debtor, whether heretofore or hereafter incurred, of the kind specified in sections 105, 326, 328, 330, 331, 503(b), 506(c) (but subject to paragraph 11 below), 507(a), 507(b) or 726 of the Code, provided, however, such superpriority administrative expense status shall be and hereby is subject, subordinate and junior in all respects, including priority, only to the Carve-Out, the Professional Fee Reserve and the Professional Fee Carve-Out, provided, further, that such superpriority administrative expense status shall not extend to, or be payable from the proceeds of Avoidance Actions but shall share pro rata with all other administrative expense claims in the proceeds of Avoidance Actions For purposes of this Order, "Carve-Out" shall mean, following the termination of the DIP Facility as a consequence of the occurrence of an Event of Default (as defined herein) and upon delivery of a "Termination Notice," in accordance with the terms of this Order and the DIP Loan Terms and Conditions the payment of (i) quarterly fees required to be paid pursuant to 28 U S C § 1930(a)(6) and (ii) any fees payable to the Clerk of the Court. Other than the Carve-Out, the Professional Fee Reserve and the Profcssional Fee Carve-Out, no other claims, costs or expenses, including, without limitation, any

administrative claim granted to any reclamation claimant, that have been or may be incurred in this case, or in any conversion of this case pursuant to section 1112 of the Code, or in any other proceeding related thereto (i) shall be granted a priority senior to or pari passu with (x) the claims of the DIP Lenders against the Debtor or any successor Debtor or trustee, or (y) the security interests and liens of the DIP Agent, for the ratable benefit of the DIP Lenders, upon the DIP Collateral, or (ii) shall be imposed against the DIP Agent, the DIP Lenders, the Post-Petition Indebtedness, or the DIP Collateral, while any portion of the Post-Petition Indebtedness remains outstanding unless first consented to in writing by the DIP Lenders

11 Application of Proceeds from Cash Collateral, Section 506(c) and 552(b) Waiver Upon its receipt of Cash Collateral, the Debtor is authorized to retain Cash Collateral in an amount which the Debtor believes will be required to enable it to pay Budgeted Expenses as they are incurred for the term of the Budget All Cash Collateral received by the Debtor which is not required to pay Budgeted Expenses as they are incurred for the term of the Budget shall be turned over to the DIP Agent The DIP Lenders shall apply the Cash Collateral received by them first to repay the Post-Petition Indebtedness until such Post-Petition Indebtedness is paid in full, and thereafter the Pre-Petition Lenders shall apply the Cash Collateral to the Pre-Petition Obligations until such Pre-Petition Obligations are paid in full The automatic stay of Section 362(a) of the Code is modified to enable the Pre-Petition Lenders to apply the Cash Collateral to the Pre-Petition Obligations as set forth herein The Debtor and the Committee hereby waive any right they may have under section 506(c) and 552(b) of the Code or otherwise, to surcharge the DIP Collateral (but not the Pre-Petition Collateral to the extent it secures

the Pre-Petition Obligations) with respect to any and all administrative expenses other than the Carve-Out, the Professional Fee Reserve and the Professional Fee Carve-Out without the prior written consent of the DIP Agent or the Pre-Petition Agent, as applicable

12 Limitation on Use of Post-Petition Advances and Cash Collateral. (a) The Debtor agrees that no portion of the Post-Petition Advances, the DIP Collateral (or any proceeds thereof), Pre-Petition Collateral (or any proceeds thereof), Cash Collateral, the Professional Fee Reserve, the Professional Fee Carve-Out and/or the Carve-Out may be used to commence or prosecute any action, proceeding or objection with respect to the claims, liens or security interests of the Pre-Petition Lenders, the Pre-Petition Agent, the DIP Lenders or the DIP Agent or any other claim against the Pre-Petition Lenders, the Pre-Petition Agent, the DIP Lenders or the DIP Agent (other than an investigation by the Creditors Committee of the claims, actions, relationship to the Debtor, liens or security interests of the Pre-Petition Agent and the Pre-Petition Lenders). The Debtor agrees that the Post-Petition Advances will be used to pay Budgeted Expenses as described on the Budget as provided by this Order and DIP Loan Terms and Conditions

Adequate Protection

13 Use of Cash Collateral, Replacement Liens Subject to paragraph 8 and 11 and subject, subordinate and junior in all respects, including priority, to the Carve-Out, the Professional Fee Reserve and the Professional Fee Carve-Out, the Pre-Petition Agent, for benefit of the Pre-Petition Lenders, is hereby granted (a) replacement security interests in and liens upon, all of the DIP Collateral of the same type constituting Pre-Petition Collateral and (b) a perfected junior lien on all unencumbered property and

interests, real and personal, tangible and intangible, of the Debtor, whether now owned or hereafter acquired, all products and proceeds thereof, and accessions thereto, including, without limitation, all of the Debtor's rights and interests, if any, in and under that certain Distribution and License Agreement between Women First Healthcare, Inc and Laboratories Fournier S A dated July 19, 1999 (as amended from time to time), all inventory, accounts receivable, general intangibles, equipment, notes, documents, chattel paper, cash and interests in real property (whether owned or leased), but excluding Avoidance Actions (the "Adequate Protection Liens"). The Adequate Protection Liens are junior in priority to the liens of the DIP Lenders, but superior to all other liens on the DIP Collateral (other than the Existing Liens having priority over the DIP Agent's Liens and the Carve-Out and shall not extend or attach to the Professional Fee Reserve or the Professional Fee Carve-Out) The Adequate Protection Liens secure only the amounts necessary to adequately protect the interests of the Pre-Petition Agent, for the benefit of the Pre-Petition Lenders, to the extent of their interests in the Pre-Petition Collateral in regard to the priming of the Pre-Petition Agent's Liens and for the use of their respective interests in the Pre-Petition Collateral (including Cash Collateral) to the extent of any diminution in value as a result thereof The automatic stay is hereby modified as against the DIP Agent, the DIP Lenders, the Pre-Petition Agent and the Pre-Petition Lenders to permit each of them to effectuate the provisions of this paragraph 13 The terms of this paragraph are subject to the Review Period and the reservation of rights with regard to potential claims against the Pre-Petition Agent and Pre-Petition Lenders described in Paragraph 21 herein

14 Proceeds of Sale of Pre-Petition Collateral As proceeds of Pre-Petition Collateral are realized by the Debtor, the net proceeds (after payment of the Sale Transaction Fee pursuant to that certain letter engagement dated February 24, 2004, between the Debtor and Miller Buckfire Lewis Ying & Co , as defined therein) and after a retention by the Debtor of amounts sufficient to fund its Budgeted Expenses through the end of the term of the Budget) shall be used by the DIP Lenders to pay down the DIP Facility until the DIP Facility is paid in full Thereafter, the proceeds of Pre-Petition Collateral realized by the Debtor shall be used by the Pre-Petition Lenders to reduce the Pre-Petition Obligations, and the automatic stay imposed by section 362(a) of the Code shall be modified for such purpose Notwithstanding the foregoing, the DIP Lenders and the Pre-Petition Lenders agree that sufficient Cash Collateral shall be made available to the Debtor subject to the terms of this Order and the DIP Loan Terms and Conditions to fund the Budgeted Expenses as they are incurred through the term of the Budget

15 Wyeth Collateral Notwithstanding anything to the contrary in this Order, including, without limitation, paragraphs 13 and 14 of this Order, the Debtor shall not use, sell, lease or otherwise dispose of the Wyeth Collateral without the prior written consent of Wyeth or order of this Court The Debtor shall keep records sufficient to identify any cash or cash equivalents that represent Wyeth Collateral (the "Wyeth Cash Collateral") and shall provide Wyeth with a report setting forth any Wyeth Cash Collateral by June 1, 2004, and updated reports by the first day of each successive month This paragraph is without prejudice to the right of the Debtor to move the Court for authority to use, sell or lease the Wyeth Collateral in accordance with 11 U S C § 363, including, without limitation, by providing Wyeth with adequate protection pursuant to

11 U S C § 363(e) This paragraph shall apply only to the extent that Wyeth's security interests in and liens on the Wyeth Collateral are properly perfected and enforceable and not otherwise invalidated or avoided.

16 Survival of Liens, Priorities and Rights The provisions of this Order shall be immediately and fully effective and binding upon the Debtor upon entry by the Court and any actions taken pursuant hereto shall survive entry of, and shall govern with respect to any conflict with, any order (i) which may be entered confirming any plan of liquidation or reorganization or (ii) which may be entered converting the Debtor's chapter 11 case from chapter 11 to chapter 7 The priority of the liens and security interests granted to the DIP Agent, for the ratable benefit of the DIP Lenders, in paragraph 8 hereof, the priority of the superpriority administrative expense granted to the DIP Lenders in paragraph 10 hereof, and all rights of the DIP Agent and the DIP Lenders and all obligations of the Debtor created hereunder or arising pursuant hereto on or after the Petition Date, shall continue in the Debtor's chapter 11 case and in any superseding chapter 7 case under the Code, and such claims, liens and security interests shall maintain their priority as provided by this Order until satisfied and discharged in accordance with the DIP Loan Terms and Conditions

17 Effect of Modification, Vacation or Stay of Order Except as otherwise agreed to by the DIP Agent, consistent with section 364(e) of the Code, if any or all of the provisions of this Order are hereafter modified, vacated or stayed (a) such stay, modification or vacation shall not affect the validity of any obligation, indebtedness, liability, security interest or lien granted or incurred by the Debtor to the DIP Agent or the DIP Lenders (in their capacity as DIP Agent and DIP Lenders) on or after the Petition

Date and prior to the effective date of such stay, modification or vacation, or the validity and enforceability of any security interest, lien, priority or right authorized or created hereby; and (b) any indebtedness, obligation or liability incurred by the Debtor to the DIP Agent or the DIP Lenders on or after the Petition Date and prior to the effective date of such stay, modification or vacation shall be governed in all respects by the provisions of this Order, and the DIP Agent and the DIP Lenders shall be entitled to all the rights, remedies, privileges and benefits, including the priority, security interests and liens granted herein, with respect to any such indebtedness, obligation or liability

18 Events of Default Except as otherwise provided for in this Order, or to the extent that the DIP Lenders may otherwise agree in writing, the Debtor shall not seek, and it shall constitute an Event of Default under the DIP Facility, in addition to those Events of Default set forth in the DIP Loan Terms and Conditions, should there be entered or the Debtor seeks, any order (i) dismissing the chapter 11 case of the Debtor under sections 305 or 1112 of the Code or otherwise; (ii) converting the chapter 11 case of the Debtor under section 1112 of the Code or otherwise, or (iii) confirming a plan of liquidation in the chapter 11 case of the Debtor unless such order provides for (x) the payment in full in cash of all Post-Petition Indebtedness payable or owing to the DIP Lenders under the DIP Facility on or before the effective date of, or substantial consummation of, the plan of liquidation that is the subject of such order, or (y) such other treatment as may be agreed to in writing by the Debtor, the Creditors Committee and the DIP Lenders

19 Automatic Stay, Carve-Out, Professional Fee Reserve, Professional Fee Carve-Out. The automatic stay provisions of section 362 of the Code

are hereby vacated and modified to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise all rights and remedies provided for in this Order and applicable law, and to otherwise effectuate the provisions of this Order, without the need for filing further pleadings or application to or order of this Court Upon the occurrence and during the continuance of any Event of Default as defined herein, the DIP Agent and the DIP Lenders shall be, and hereby are, authorized (subject to section 22 hereof) to exercise any or all of their rights and remedies and to take any or all of the following actions without further modification of the automatic stay pursuant to section 362 of the Code or further order of or application to this Court to (a) terminate the DIP Facility and thereafter cease to make any Post-Petition Advances to the Debtor, provided however, that the DIP Lenders shall be obligated and are hereby directed to fund an amount not less than $250,000 (the "Professional Fee Reserve") and fund the Professional Fee Carve-Out on the terms set forth below, (b) declare all principal of, and accrued interest on, the obligations in respect of the DIP Facility to be immediately due and payable, (c) subject to provisions being made to satisfy the Carve-Out, enforce rights against any DIP Collateral in the possession of the DIP Agent or any of the DIP Lenders, and (d) upon the DIP Agent's providing of seven (7) business days' written notice (by facsimile, telecopy or otherwise) to the Debtor, to counsel for the Debtor, to the United States Trustee and to counsel for the Creditors Committee, and provided that the Court does not enjoin the DIP Agent or DIP Lenders, as the case may be from so doing, to take any other actions or exercise any other rights or remedies permitted under this Order or applicable law Immediately upon taking any action under clauses (a) through (d) above, the DIP Lenders shall transfer an amount not less than the Professional Fee Reserve which shall be an

escrow account maintained at a bank or other financial institution or with a law firm, in each case, reasonably acceptable to, and on terms and conditions reasonably acceptable to, lead counsel for the Debtor and the Creditors Committee for the pro rata benefit of all attorneys retained by the Debtor in this case (up to a maximum amount of $125,000) and all professional persons retained by the Creditors Committee (up to a maximum amount of $125,000) for the purpose of paying the fees and expenses of such Professional Persons that are thereafter incurred and otherwise authorized to be paid by an order of the Bankruptcy Court, provided further that the DIP Lenders shall also fund any fees and expenses of all Professional Persons retained by the Debtor and the Creditors Committee (including legal and financial advisors to the Debtor and the Creditors Committee) that remain accrued but unpaid as of the date the DIP Lenders take any actions identified in Section 19(a)-(d) hereof and provided that such amounts are otherwise authorized to be paid by an order of the Bankruptcy Court (but excluding any Sale Transaction Fee payable pursuant to that certain letter engagement dated February 24, 2004, between the Debtor and Miller Buckfire Lewis Ying & Co , as defined therein) up to a maximum amount of $862,500 (the "Professional Fee Carve-Out") Neither the DIP Agent, the DIP Lenders or the Pre-Petition Lenders shall have a lien on the Professional Fee Reserve or Professional Fee Carve-Out, but to the extent any funds remain after all such professional fees and expenses have been satisfied in full, then the balance thereof shall first be applied to reduce any Post-Petition Indebtedness then outstanding and then for other general estate purposes

20 Release and Waivers The Debtor (but not the Committee or any other party in interest) has stipulated and is hereby deemed (a) to release and discharge

the Pre-Petition Agent and Pre-Petition Lenders, in their respective capacities as such, together with their respective agents, attorneys, advisors, employees, heirs, executors, administrators, officers, directors, successors and assigns, from any and all claims, causes of action and remedies (whether under the Code or other applicable law) arising out of, based upon or related to the Pre-Petition Agreement, the Pre-Petition Loan Documents (and the transactions contemplated thereunder), the Pre-Petition Obligations and the Pre-Petition Collateral securing any of the foregoing or the Pre-Petition Agent's Liens, as the case may be, and (b) to waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, amount and nonavoidability (under the Code or otherwise) of the Pre-Petition Obligations and the Pre-Petition Agent's Liens The releases and waivers set forth in this paragraph are deemed effective upon the date of entry of this Order, but are expressly without prejudice to the rights of the Creditors Committee and parties in interest to challenge the validity of the liens and claims asserted by the Pre-Petition Agent and the Pre-Petition Lenders or otherwise seek to prosecute claims held by the Debtor or the Debtor's estate, as the case may be against the Pre-Petition Agent and/or the Pre-Petition Lenders, including, without limitation, those claims being released herein

21 Review Period Notwithstanding anything in this Order to the contrary, all parties in interest, other than the Debtor, shall have until July 6, 2004 (except that the Creditors Committee shall have until August 10, 2004) (the "Review Period") to review the Pre-Petition Loan Documents, the claims of the Pre-Petition Agent and the Pre-Petition Lenders arising thereunder If during the Review Period, such party in interest does not file an objection or other pleading with the Court (the "Review Period

Objection") contesting or asserting, as applicable, (a) the validity, perfection, priority, enforceability, amount and avoidability of the liens and security interests of the Pre-Petition Agent and the Pre-Petition Lenders in and to the Pre-Petition Collateral, or (b) any claim or cause of action against the Pre-Petition Agent, the Pre-Petition Lenders in their respective capacities as such, together with their respective agents, attorneys, advisors, employees, heirs, executors, administrators, officers, directors, successors and assigns, from any and all claims, causes of action and remedies (whether under the Code or other applicable law) arising out of, based upon or related to the Pre-Petition Agreement, the Pre-Petition Loan Documents (and the transactions contemplated thereunder), the Pre-Petition Obligations and the Pre-Petition Collateral securing any of the foregoing or the Pre-Petition Agent's Liens, as the case may be, each such party shall thereafter be forever barred from asserting or contesting any of the matters set forth in clauses (a) and (b), as applicable, of this paragraph Notwithstanding any provision of this Order, payments made by the Debtor to the Pre-Petition Agent or the Pre-Petition Lenders pursuant to this Order and the characterization of such payments, are without prejudice to the rights of the Creditors Committee or any other party-in-interest to have such payments recharacterized, reapplied, disgorged, or otherwise recovered as the result of a successful challenge, objection, or other action commenced within the Review Period

Termination Events

22 Termination Events Notwithstanding the provisions of section 362 of the Code and without order of or application or motion to the Court, but subject to the payment of fees and expenses of Professional Persons described in Section 19 hereof, in the event of (a) the failure of the Debtor to perform any of its material obligations

under this Order, (b) the occurrence and continuance of an Event of Default under the DIP Loan Terms and Conditions, or (c) the entry of an order avoiding and requiring repayment of any portion of any payments made on account of the Pre-Petition Obligations prior to the Petition Date, or any payments made on account of any Pre-Petition Obligations or Post-Petition Obligations to the extent provided in this Order (other than on the grounds that such amounts were not due and payable or were not subject to valid and perfected security interests), then and upon the occurrence of any of the foregoing (each a "Termination Event"), and at all times during the continuance thereof, and without order of or application or motion to the Court, the DIP Agent may upon not less than seven (7) Business Days prior written notice to the Debtor, the United States Trustee and counsel for the Creditors Committee (unless enjoined by Order of the Court from so doing), (i) terminate forthwith any commitment to extend credit pursuant to the DIP Loan Terms and Conditions (subject to the DIP Lenders continuing obligation to fund the Professional Fee Reserve and Professional Fee Carve-Out as proscribed in section 19 hereof), (ii) declare the Post-Petition Advances and all other Post-Petition Obligations to be immediately due and payable, and (iii) exercise any and all rights and remedies allowed under the DIP Loan Terms and Conditions and this Order; provided however that notwithstanding the foregoing and section 362 of the Code, and without order of or application or motion to the Court, if an Event of Default exists, the DIP Agent may do one or more of the following at any time and in any order (i) restrict the amount of or refuse to make Post-Petition Advances or other extensions of credit (subject to the DIP Lenders continuing obligation to fund the Professional Fee Reserve and Professional Fee Carve-Out as proscribed in section 19 hereof), and (ii) receive and hold

the cash proceeds of the DIP Collateral for application in accordance with the DIP Loan Terms and Conditions The DIP Agent's and the DIP Lenders' failure to exercise any rights under this paragraph shall not constitute a waiver of any of their rights

Termination of Interim Financing

23 Termination of Interim Financing In addition to any rights and remedies of the DIP Agent and the DIP Lenders under the DIP Loan Terms and Conditions and terms of this Order, the DIP Facility shall immediately and automatically terminate and the Post-Petition Obligations shall be immediately due and payable upon the earliest to occur of

(a) The date that is twenty (20) days following the date of the entry of this Order (or such later date as may be agreed to by the Debtor and the DIP Lenders), unless the Final Order has been entered on or prior to such date, and

(b) The date of an order confirming a chapter 11 plan for the Debtor herein, provided, that in the event the provisions of such order are reasonably satisfactory to the DIP Agent with respect to the continuation of the rights of the DIP Lenders pursuant to this Order, including priority status and all rights in the DIP Collateral, and that the Post-Petition Obligations to the DIP Agent and the DIP Lenders are to be paid in full in cash (or otherwise provided for to the satisfaction of the DIP Agent and the DIP Lenders) on or before the date such plan becomes effective, then such date

24 Preservation of Rights The obligations of the Debtor and the rights, claims, liens, security interests, and priorities of the DIP Agent and the DIP

Lenders shall remain unimpaired and unaffected by the termination of the DIP Facility pursuant to paragraphs 22 or 23 hereof

Miscellaneous Provisions

25 Access Reporting Requirements The Debtor's obligations to allow access to representatives of the DIP Agent and the DIP Lenders and to provide information with respect to and otherwise comply with the undertakings and agreements set forth in this Order and the DIP Loan Terms and Conditions shall continue beyond and shall survive the expiration of the DIP Facility until the Post-Petition Obligations are indefeasibly satisfied and discharged and all Commitments under the DIP Loan Terms and Conditions are terminated

26 No Deemed Control By consenting to this Order, by making advances or extending financial accommodations of any type, kind or nature under this Order or by administering the loans made hereunder, neither the DIP Agent, the DIP Lenders, the Pre-Petition Agent or the Pre-Petition Lenders shall be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person," "managing agent" nor "owner or operator" (as such terms or any similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar Federal or state statute) with respect to the operation or management of the Debtor

27 Leases and Licenses Pursuant to sections 363(b)(1) and 364(c)(2) of the Code, any provisions in any of the leases of nonresidential real property under which the Debtor is a lessee (each a "Lease" and collectively, the "Leases") or any license agreement under which the Debtor is a licensee (each a "License," collectively the "Licenses") that require the consent or approval of one or more of the Debtor's landlords

or licensors, as the case may be, in order for the Debtor to pledge or mortgage its interest in such Lease or License are and shall be deemed inconsistent with the provisions of the Code and are and shall have no force and effect with respect to the transactions granting the liens, security interests and mortgages by the Debtor in favor of the DIP Agent and the DIP Lenders in accordance with this Order

28 No Waiver This Order shall not be construed in any way as a waiver or relinquishment of any rights that DIP Agent, DIP Lenders, Pre-Petition Agent or Pre-Petition Lenders may have to bring or be heard on any matter before this Court

29 No Third Party Beneficiary Nothing in this Order or the DIP Loan Terms and Conditions shall confer third party beneficiary rights upon any person, other than the professional persons entitled to payment of fees and expenses as described in this Order

30 Modifications and Amendments The Debtor, the DIP Agent and the DIP Lenders are hereby authorized (i) to implement, in accordance with the terms of this Order, any non-material modifications (including, without limitation, any change in the number or composition of the DIP Lenders) to the DIP Facility without further order of this Court, provided a copy is promptly delivered to the United States Trustee and counsel to the Creditors Committee and (ii) subject to paragraph 7, to agree upon and enter into any written amendments or modifications to the Budget without further order of this Court Any material amendment or modification to the DIP Facility shall be subject to Court approval on notice, provided notice and a copy thereof is delivered to the United States Trustee and counsel to the Creditors Committee

31 Immediate Effect of Order The provisions of this Order shall be effective immediately upon entry of this Order, and the Clerk of the Court is hereby directed to forthwith enter this Order on the docket of this Court maintained in regard to this case To the extent there is any conflict between the terms of the DIP Loan Terms and Conditions and the terms of this Order, the terms of this Order shall govern

Dated: Wilmington, Delaware
June 3, 2004

THE HONORABLE MARY F WALRATH
CHIEF UNITED STATES BANKRUPTCY JUDGE

ACKNOWLEDGED AND AGREED TO·

Women First Healthcare, Inc , by its counsel
Robert Klyman, Esq
Latham & Watkins LLP

ACKNOWLEDGED AND AGREED TO

CIBC WMC, Inc., the DIP Agent, by its counsel
Alan W Kornberg, Esq
Paul, Weiss, Rifkind, Wharton & Garrison LLP

ACKNOWLEDGED AND AGREED TO BY THE DIP LENDERS

CIBC WMC INC

By _____
Name
Title

WHITNEY PRIVATE DEBT FUND
By Whitney Private Debt GP, LLC,
its General Partner

By _____
Name
Title

ACKNOWLEDGED AND AGREED TO BY THE PRE-PETITION LENDERS

CIBC WMC INC.

By _____
Name
Title

WHITNEY PRIVATE DEBT FUND
By Whitney Private Debt GP, LLC,
its General Partner

By _____
Name
Title

J H WHITNEY MEZZANINE FUND, L P
By Whitney GP, LLC, its General Partner

By _____
Name
Title

EXHIBIT 1

AGREED UPON TERMS AND CONDITIONS OF THE DIP FACILITY

I THE LOANS

A The Loans

(1) Subject to these terms and conditions and any order entered by the Bankruptcy Court approving these DIP Loan Terms and Conditions, CIBC WMC Inc and Whitney Private Debt Fund (the "DIP Lenders") agree to make advances to Women First HealthCare, Inc (the "Debtor") from time to time during the period (the "Commitment Period") commencing on the Effective Date (as defined below) to, but not including, the Termination Date (as defined below), so long as an Event of Default (as defined below) hereunder, or any event which upon the lapse of time, the giving of notice or both would become an Event of Default hereunder, shall have not occurred, in an amount which will not exceed in the aggregate at any one time $3,000,000 (the "Commitment") (each such advance, a "Post-Petition Advance," and collectively, the "Post-Petition Advances"), provided, however, that notwithstanding the foregoing, the DIP Lenders agree to fund the Carve-Out, the Professional Fee Reserve and the Professional Fee Carve-Out Furthermore, the DIP Lenders agree that Cash Collateral, including, without limitation, proceeds from the sale or collection of Pre-Petition Collateral may be used by the Debtor to fund Budgeted Expenses as provided herein and in the DIP Order through the term of the attached Budget

(2) The first Post-Petition Advance shall be made to effect payment of a facility fee of $200,000 to the DIP Agent for disbursement to the DIP Lenders on a pro rata basis

B Repayment of the Post-Petition Advances The entire amount of the outstanding principal balance and all unpaid interest owing hereunder shall become due and payable on the Termination Date (as hereinafter defined) All payments hereunder shall be applied first to any unpaid fees and expenses of the DIP Lenders and the DIP Agent (including professional fees) and accrued interest on the Post-Petition Advances and then to the outstanding principal balance of the Post-Petition Advances

C Prepayment The Debtor may prepay, without premium or penalty, all or part of the Post-Petition Advances, provided that interest on the principal amount repaid, accrued to the prepayment date, and unpaid fees and expenses of the DIP Lenders and the DIP Agent (including professional fees) shall also be paid on the prepayment date

D Limitation on Post-Petition Advances

(1) In no event shall the aggregate amount of the Post-Petition Advances exceed an amount equal to the Commitment less an amount equal to (a) the Carve-Out (as defined below) plus (b) the Professional Fee Reserve (as defined below) plus (c) the Professional Fee Carve-Out (as defined below)

(2) Notwithstanding anything contained in Section I A , the aggregate amount of the Post-Petition Advances shall not exceed any maximum borrowing authority of the Debtor as may from time to time be ordered or authorized by the Bankruptcy Court

E Procedure for Borrowing The Debtor may borrow under the Commitment during the Commitment Period on any business day The Debtor shall give

the DIP Agent irrevocable notice (which notice must be received by the DIP Agent prior to 10 00 a m New York City time, one (1) business day prior to the required borrowing date), specifying (i) the amount of the Post-Petition Advance, (ii) the requested borrowing date, and (iii) certification of the Debtor's need for the Post-Petition Advance (i.e that the Debtor's cash is insufficient to fund its ordinary course operations in accordance with the Budget in effect at the time of the borrowing) Upon receipt of such notice from the Debtor, provided, that, the DIP Agent is satisfied that the Post-Petition Advance is to be used by the Debtor for a purpose contemplated by the Budget, the DIP Agent shall make such Post-Petition Advance by wire transfer of immediately available funds in accordance with the wire transfer instructions for the Debtor set forth in Schedule 2 hereto

II INTEREST

A Interest The Post-Petition Advances shall bear interest at a per annum rate of 15% Subject to Section I B , interest on the outstanding Post-Petition Advances shall be payable monthly in arrears on the first day of each month commencing on June 1, 2004

B Computation of Interest Interest hereunder shall be computed on the basis of a year of 360 days for the actual number of days elapsed

C Payments and Endorsements All payments of principal and interest hereunder shall be made to the DIP Agent without setoff or counterclaim and shall be made before 12 00 noon, New York City time, on the due date thereof by wire transfer of immediately available funds in accordance with the wire transfer instructions for the DIP Agent set forth in Schedule 2 hereto

D Payment on Non-Business Days Whenever any payment to be made hereunder shall be stated to be due on a Saturday, Sunday or any other day on which commercial banks located in New York City are authorized or obligated to close or any day designated as a legal holiday by Rule 9006(c) of the Federal Rules of Bankruptcy Procedures, such payment may be made on the next succeeding business day, and such extension of time shall in such case be included in the computation of interest hereunder

III CONDITIONS PRECEDENT The DIP Lenders' obligation to make the initial Post-Petition Advance requested hereunder is subject to the satisfaction (or waiver by the DIP Lenders) of each of the following conditions precedent

(1) the DIP Agent shall have (i) received evidence satisfactory to it that the Debtor's cash is insufficient to fund its ordinary course operations and (ii) received and approved a detailed weekly budget in a form approved by the DIP Agent and the DIP Lenders (the "Budget") of the Debtor's projected receipts and expenditures (the "Budget Amount"), as may be in effect from time to time, the Budget may be modified from time to time subject to the approval of the DIP Lenders The expenditures authorized in the Budget (the "Budgeted Expenses") shall be adhered to subject to a 15% variance in the category "Disbursements" on a weekly and cumulative basis during the Budget Period, provided, that in no event shall the Budget Amount exceed the Commitment, the Budget is set forth in Schedule 1 hereto,

(2) the DIP Agent shall have received a certified copy of a resolution of the board of directors of the Debtor authorizing these DIP Loan Terms and Conditions and the borrowings by the Debtor hereunder;

(3) the Debtor shall have executed and delivered written instruments reasonably requested by the DIP Agent or any of the DIP Lenders, including, but not limited to, a promissory note, evidencing the Debtor's obligations under these DIP Loan Terms and Conditions to the DIP Agent or DIP Lender, as the case may be,

(4) the Bankruptcy Court shall have entered an interim order in form and substance satisfactory to the DIP Lenders, approving (a) these DIP Loan Terms and Conditions and authorizing the borrowings contemplated hereby, (b) the status of the Post-Petition Advances as secured by liens on all of the Debtor's property, in accordance with Section VIII hereof, (c) the status of the liens of the Pre-Petition Lenders on the Debtor's property in accordance with Section VIII hereof; (d) the super-priority administrative status (the "Super-Priority") of the outstanding Post-Petition Advances and any related obligations of the Debtor hereunder pursuant to section 364(c)(1) of the Code over any and all administrative expenses of the kind specified in sections 503(b) and 507 of the Code, which order shall be in full force and effect, shall not have been revised, modified or amended and no stay shall have been granted with respect thereto (the "Interim DIP Order," and the date of such order, the "Interim DIP Order Date"); the DIP Agent shall have received a certified copy of the Interim DIP Order,

(5) no preliminary or final injunction which restrains or prohibits the consummation of the transactions contemplated hereby shall have been issued and be in effect,

(6) the representations and warranties contained in Section VII hereof shall be true and correct in all materials respects on and as of the Effective Date as though made on and as of the Effective Date,

(7) no event shall have occurred and be continuing on the Effective Date which constitutes an Event of Default or would constitute an Event of Default but for the giving of notice, the lapse of time or both, and

(8) the Debtor shall have executed a binding asset purchase agreement with SkinMedica, Inc , for the sale, subject to Bankruptcy Court approval, of all of the Debtor's rights and interests in and under (a) the Asset Purchase Agreement for Vaniqa® between Westwood-Squibb Colton Holdings Partnership, The Gillette Company, Bristol-Myers Squibb Company (BMS) and Women First Healthcare, Inc dated as of June 25, 2002, (b) the License Agreement among The Gillette Company, Bristol-Myers Squibb Company (BMS) and Women First Healthcare, Inc for Vaniqa® dated as of June 25, 2002 and (c) the Supply Agreement between Bristol-Myers Squibb Company and Women First Healthcare, Inc for Vaniqa® dated as of June 25, 2002, as such agreements may have been amended from time to time (the "Vaniqa Sale"), in a form reasonably acceptable to the DIP Lenders (the "Vaniqa Asset Purchase Agreement")

IV CONDITIONS PRECEDENT TO SUBSEQUENT ADVANCES. The obligation of the DIP Lenders to make each Post-Petition Advance (including the initial Post-Petition Advance), but excluding the obligation to fund the Professional Fee Reserve and the Professional Fee Carve-Out (with respect to the fees and expenses of Professional Persons as described in Section 19 of the DIP Order) shall be subject to the following conditions precedent

(1) the representations and warranties contained in Section VII shall be true and correct on and as of the date of such Post-Petition Advance as though made on and as of such date,

(2) the Debtor shall certify in writing and document its need for the Post-Petition Advance (i.e. that the Debtor's cash is insufficient to fund its ordinary course operations) for the purpose of meeting the terms of the Budget then in effect,

(3) no event shall have occurred and be continuing on the date of such Post-Petition Advance which would constitute an Event of Default or would constitute an Event of Default but for the giving of notice, the lapse of time, or both;

(4) the Interim DIP Order (if the date of such Post-Petition Advance is on or after the Interim DIP Order Date but is before the Final DIP Order Date (as defined below)) or the Final DIP Order (as defined below) (if the date of such Post-Petition Advance is on or after the Final DIP Order Date), as the case may be, shall have been entered by the Bankruptcy Court, either the Interim DIP Order or the Final DIP Order, as the case may be, shall be in form and substance satisfactory to the DIP Lenders and shall approve. (a) these DIP Loan Terms and Conditions and authorize the borrowings contemplated hereby; (b) the status of the Post-Petition Advances as obligations of the Debtor secured by liens on all of the Debtor's property in accordance with Section VIII hereof, (c) the status of the liens of the Pre-Petition Lenders on the Debtor's property in accordance with Section VIII hereof; and (d) the Super-Priority of the outstanding Post-Petition Advances and any related obligations of the Debtor hereunder pursuant to section 364(c)(1) of the Code over any and all administrative

expenses of the kind specified in sections 503(b) and 507 of the Code other than amounts entitled to be satisfied pursuant to the Carve-Out or Professional Fee Reserve or Professional Fee Carve-Out, and either the Interim DIP Order or the Final DIP Order, as the case may be, shall be in full force and effect, shall not have been revised, modified or amended and no stay shall have been granted with respect thereto (provided however that the super-priority claim of the DIP Lenders shall not be payable from the proceeds of Avoidance Actions (hereinafter defined) but shall share pro rata with all other administrative expense claims in the proceeds of Avoidance Actions (hereinafter defined), as used herein, the terms "Final DIP Order" and "Final DIP Order Date" shall mean the final order approving the foregoing items (a) though (d), and the date such order is entered by the Bankruptcy Court, respectively, and

(5) an order approving sale procedures relating to the Vaniqa Sale, shall have been entered by the Bankruptcy Court, shall be in full force and effect, shall not have been revised, modified or amended (without the consent of the DIP Lenders) and no stay shall have been granted with respect thereto.

V COVENANTS The Debtor hereby covenants and agrees with the DIP Lenders that so long as the Commitment remains in effect, or any amount is owed to the DIP Lenders hereunder, it shall

(1) maintain its books and records in accordance with generally accepted accounting principles and promptly, upon the DIP Agent's request therefor, furnish to the DIP Agent all financial or other information so requested by the DIP Agent and permit the DIP Agent to audit the books and records of the Debtor at all times reasonably requested by the DIP Agent and to make copies thereof or extracts therefrom;

(2) promptly give to the DIP Agent and counsel to the Creditors Committee written notice of (a) any Event of Default or any event which, upon the lapse of time, the giving of or notice or both, would become an Event of Default, (b) the occurrence of any event or any matter which has resulted or will result in a material adverse change in the Company's business, assets, operations, or financial condition, including, without limitation, any change in the Debtor's relations with any of its customers, distributors or suppliers,

(3) deliver to the DIP Agent and counsel to the Creditors Committee by the Thursday of each week during the Commitment Period an updated version of the Budget identifying the Debtor's cash receipts, expenditures and cash balances at the end of the immediately preceding week together with a comparison of projected and actual expenditures during such week, as set forth in the Budget, certified as true, correct and complete, to the best knowledge of an officer of the Debtor The expenditures authorized in the Budget shall be adhered to, subject to a 15% variance in the category "Disbursements," on a weekly and cumulative basis during the Budget period The Debtor shall also provide a variance report (the "Variance Report") reflecting on a line-item basis the actual cash receipts and disbursements for the preceding week and the percentage variance of such actual results from those reflected in the Budget for the preceding week, and a written explanation of such variance,

(4) deliver to the DIP Agent and counsel to the Creditors Committee copies of the Debtor's monthly operating reports as filed with the Bankruptcy Court on the date so filed,

(5) deliver to the DIP Agent any other documents or information, promptly upon the DIP Agent's reasonable request therefor,

(6) maintain its corporate existence and its qualification and good standing in all states where it is necessary to conduct its business and own its property,

(7) pay all insurance premiums and other amounts necessary to maintain adequate insurance coverage on all of the Debtor's assets and all withholding taxes and all post-petition taxes incurred by it as and when due,

(8) continue to employ (a) the current Vice President of Pharmaceuticals, Saundra Pelletier, and (b) the current Chief Financial Officer, Richard Vincent;

(9) deliver to counsel for the DIP Agent all pleadings, motions, applications and other documents filed by the Debtor with the Bankruptcy Court and, deliver to the DIP Agent any financial information delivered to any official committee appointed in this case; and

(10) continue to retain Miller Buckfire Lewis Ying & Co LLC, or such other financial advisor and investment banker reasonably satisfactory to the DIP Lenders

VI NEGATIVE COVENANTS The Debtor covenants and agrees that, so long as the Commitment remains in effect or any amount is owed to the DIP Lenders hereunder, it will not, without the prior written consent of the DIP Lenders

(1) use all or any portion of the Post-Petition Advances for any purpose other than pursuant to and in accordance with the terms of the Budget then in effect,

(2) except as otherwise provided herein, create, assume, or suffer to exist, or seek to create, assume, or suffer to exist any lien on or security interest in the DIP Collateral in favor of any person other than the DIP Agent or the DIP Lenders ranking senior or pari passu with the DIP Lender Liens,

(3) create, assume, or suffer to exist, or seek to create, assume, or suffer to exist, any unsecured debt incurred after the Petition Date which would have the priority of an expense of administration senior or equal to the DIP Lenders' priority under Section VIII D hereof,

(4) engage in any line of business other than the business in which it is engaged in on the date hereof, and

(5) pay any pre-petition debts or other pre-petition obligations without an order of the Bankruptcy Court authorizing it to do so

VII REPRESENTATIONS AND WARRANTIES The Debtor hereby represents and warrants to the DIP Lenders that on each of the date hereof, the Effective Date and the date of each Post-Petition Advance hereunder that

A. Corporate Action Conditioned upon entry of the Interim and Final DIP Orders, as the case may be, the Debtor has all necessary corporate power and authority to perform its obligations under these DIP Loan Terms and Conditions, the performance by the Debtor of these DIP Loan Terms and Conditions has been duly

authorized by all necessary corporate action on its part, and constitutes its legal, valid and binding obligations, enforceable in accordance with their respective terms

B Approval Except as expressly provided herein, no authorizations, approvals or consents of, and no filings or registrations with, any governmental or regulatory authority or agency or any other person or entity are necessary for the performance by the Debtor of these DIP Loan Terms and Conditions or for the validity or enforceability thereof

C No Breach The consummation of the transactions contemplated herein and compliance with the terms and provisions hereof will not conflict with or result in a breach of, or require any consent under, the charter or by-laws of the Debtor, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency or any material agreement by which the Debtor or any of its property is bound

VIII SENIOR LIEN/PRIORITY

A Senior Lien, Junior Lien As security for the Post-Petition Advances and the obligations hereunder, the Debtor hereby grants to the DIP Lenders subject, subordinate and junior in all respects, including priority, to the Carve-Out, the Professional Fee Reserve and the Professional Fee Carve-Out

(i) pursuant to section 364(c)(2) of the Code, a perfected first priority lien on all unencumbered property and interests, real and personal, tangible and intangible, of the Debtor, whether now owned or hereafter acquired, all products and proceeds thereof, and accessions thereto, including, without limitation, all of the Debtor's rights and interests in and under that certain Distribution and License Agreement between Women First Healthcare, Inc. and Laboratories Fournier S A dated July 19, 1999 (as amended from time to time), all inventory, accounts receivable, general intangibles, equipment, notes, documents, chattel paper, cash and interests in real property (whether owned or leased), but excluding avoidance actions by the Debtor or its estate, including,

without limitation, those arising under sections 544, 545, 547, 548, 549, 550 and 553 of the Code or the proceeds thereof (collectively, "Avoidance Actions"),

(ii) subject to subparagraph (iii) below, pursuant to section 364(c)(3) of the Code, by a perfected junior lien on all property of the Debtor that is subject to Existing Liens "Existing Liens" shall mean those liens that were permitted under the Pre-Petition Agreement and in existence (other than in favor of the Pre-Petition Lenders) immediately prior to the filing of the Debtor's chapter 11 case, to the extent that such liens are valid, perfected and non-avoidable; and

(iii) pursuant to section 364(d)(1) of the Code, by a perfected first priority, senior priming lien on the pre-petition collateral that is subject to the first priority existing liens that secure the obligations of the Debtor to the Pre-Petition Lenders under or in connection with the Pre-Petition Agreement, all of which existing liens (the "Primed Liens") shall be primed by and made subject and subordinate to the perfected first priority senior liens to be granted to the DIP Agent on behalf of the DIP Lenders, which senior priming liens in favor of the DIP Agent shall also prime any liens granted after the commencement of this case to provide adequate protection in respect of any of the Primed Liens but shall not prime Existing Liens

In addition, the DIP Facility shall be secured by a perfected junior lien on all property of the Debtor that is subject to Existing Liens, ranking equal in priority to the junior existing liens on the pre-petition collateral that secure the obligations of the Debtor under or in connection with the Pre-Petition Agreement All such property of the Debtor subject to the liens of the DIP Agent as referred to above (the "DIP Lender Liens") is hereinafter referred to as the Post-Petition Collateral.

B Automatic Perfection The Interim and Final DIP Orders create a valid and enforceable lien on and security interest in and to the Debtor's assets, without the necessity of filing or recording such lien and security interest under any applicable state or federal law The DIP Agent may, but shall not be required to, file any Uniform Commercial Code financing statements and record any additional documents in any jurisdiction or take any other or further action to validate or perfect the liens and security interests granted to it pursuant to this Agreement The Debtor shall execute all financing statements and other documents requested by the DIP Agent for the perfection of liens and security interests granted hereunder and the Debtor agrees to a lifting of the automatic stay for the limited purpose of carrying out the purposes of this section

C Adequate Protection

(i) The Pre-Petition Lenders shall be entitled to adequate protection for such Primed Liens in the form of a perfected junior lien subject, subordinate and junior in all respects, including priority, to the Carve-Out, the Professional Fee Reserve and the Professional Fee Carve-Out on all unencumbered property and interests, real and personal, tangible and intangible, of the Debtor, whether now owned or hereafter acquired, all products and proceeds thereof, and accessions thereto, including, without limitation, all of the Debtor's rights and interests in and under that certain Distribution and License Agreement between Women First Healthcare, Inc and Laboratories Fournier S A dated July 19, 1999 (as amended from time to time), all inventory, accounts receivable, general intangibles, equipment, notes, documents, chattel paper, cash and interests in real property (whether owned or leased), but excluding Avoidance Actions

(ii) All proceeds constituting the Pre-Petition Lenders' cash collateral, (other than amounts deemed necessary by the Debtor to fund Budgeted Expenses) shall, at the option of the DIP Agent and the Pre-Petition Lenders, in their sole discretion, be turned over to either the DIP Agent or the Pre-Petition Lenders and shall be used first to pay down the DIP Facility until the DIP Facility is paid in full and thereafter shall be applied in reduction of amounts owed under or, connection with the Pre-Petition Agreement, and the automatic stay imposed by section 362(a) of the Code shall be modified for such purpose. The DIP Lenders and the Pre-Petition Lenders agree that sufficient cash collateral shall be made available to the Debtor subject to these DIP Loan Term and Conditions to fund the Budgeted Expenses as they are incurred, notwithstanding that the term of the Budget may extend beyond the Termination Date

(iii) As proceeds of Pre-Petition Collateral are realized, the net proceeds (after payment of the Sale Transaction Fee pursuant to that certain letter engagement dated February 24, 2004, between the Debtor and Miller Buckfire Lewis Ying & Co , as defined therein) and after a retention by the Debtor of amounts sufficient to fund its Budgeted Expenses through the end of the Budget Period) shall be used by the DIP Lenders to pay down the DIP Facility until the DIP Facility is paid in full Thereafter, the proceeds of Pre-Petition Collateral realized by the Debtor shall be used by the Pre-Petition Lenders to reduce the Pre-Petition Obligations, and the automatic stay imposed by section 362(a) of the Code shall be modified for such purpose Notwithstanding the foregoing, the DIP Lenders and the Pre-Petition Lenders agree that sufficient Cash Collateral shall be made available to the Debtor subject to the terms of the DIP Order and these DIP Loan Terms and Conditions to fund the Budgeted Expenses as they are incurred.

D Super Priority In addition to the Senior Lien, the DIP Lenders shall also be granted an allowed, super-priority administrative claim for the Post-Petition Advances and any related obligations of the Debtor hereunder, pursuant to section 364(c)(1) of the Code, which claim shall be senior in right of payment to all administrative expenses in this case under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b) and 726(b) of the Code, other than with respect to fees of the U S Trustee (the "Carve-Out") and the Professional Fee Reserve, as well as the obligation to fund any fees and expenses of all Professional Persons retained by the Debtor and the Creditors Committee (including legal and financial advisors to the Debtor and the Creditors Committee) that remain accrued but unpaid as of the date the DIP Lenders take

any of the actions identified in Section XI hereof and otherwise authorized to be paid by an order of the Bankruptcy Court (but excluding any Sale Transaction Fee payable pursuant to that certain letter engagement dated February 24, 2004, between the Debtor and Miller Buckfire Lewis Ying & Co , as defined therein) up to a maximum amount of $862,500 (the "Professional Fee Carve-Out") Notwithstanding the foregoing the DIP Lenders' superpriority claim shall not be recoverable from Avoidance Actions but shall share pro rata with all other administrative expense claims in the proceeds of Avoidance Actions

IX EVENTS OF DEFAULT The following shall constitute "Events of Default" hereunder

(1) the Debtor defaults in the payment of any principal or interest or any other amount due hereunder for more than ten (10) days after the same becomes due and payable in accordance with the terms hereof,

(2) any of the Debtor's covenants shall be breached in any material respect,

(3) any of the Debtor's representations or warranties contained herein or in any other writing delivered by the Debtor to the DIP Lenders pursuant to or in connection with these DIP Loan Terms and Conditions shall prove to have been false or misleading when made (or deemed made) or shall be breached in any material respect,

(4) the appointment of a trustee or an examiner or other person with expanded powers under section 1104 of the Code by final order of the Bankruptcy Court or such other court exercising jurisdiction over the chapter 11 case,

(5) the dismissal of the chapter 11 case, any conversion to chapter 7, termination of the Debtor's exclusive right to file a plan, or the incurrence of other indebtedness that is secured by liens pari passu or senior to the DIP Lender Liens under section 364 of the Code,

(6) the Bankruptcy Court does not enter a order approving the Bid Procedures Order by May 24, 2004 or the Bankruptcy Court does not enter a order approving the Vaniqa Sale by June 25, 2004 or the Vaniqa Asset Purchase Agreement terminates in accordance with its terms or the failure of the Debtor to consummate the sale contemplated by the Vaniqa Asset Purchase Agreement by August 3, 2004,

(7) SkinMedica Inc terminates the Vaniqa Asset Purchase Agreement pursuant to section 9 01(k) of the Vaniqa Asset Purchase Agreement,

(8) any stay or modification of the Interim or Final Order approving the DIP Facility not consented to in writing by the DIP Lenders,

(9) a plan of liquidation, in a form reasonably acceptable to the DIP Lenders, is not filed with the Bankruptcy Court within sixty (60) days of the Petition Date,

(10) entry of an order granting any creditor relief from the automatic stay which has a reasonable likelihood of affecting property of the Debtor's having a value of $200,000 or more,

(11) the commencement against the DIP Agent or any of the DIP Lenders of any action or proceeding which asserts by or on behalf of the Debtor or any of the Debtor's creditors or any committee thereof, or affiliates, successors, or

assigns, any cause of action or claim which seeks to setoff or counterclaim against, disallow, limit or reduce, or, avoid or subordinate the Debtor's obligations to the DIP Agent or the DIP Lenders or the DIP Lender Liens, or to recover any legal or equitable remedy against the DIP Agent or the DIP Lenders,

(12) the commencement against the Pre-Petition Agent or any of the Pre-Petition Lenders of any action or proceeding which asserts by or on behalf of the Debtor or any of the Debtor's creditors or any committee thereof, or affiliates, successors, or assigns, any cause of action or claim which seeks to setoff or counterclaim against, disallow, limit or reduce, or, avoid or subordinate the Debtor's obligations to the Pre-Petition Agent or the Pre-Petition Lenders or the Pre-Petition Lender Liens, or to recover any legal or equitable remedy against the Pre-Petition Agent or the Pre-Petition Lenders,

(13) any attempt by the Debtor to invalidate, reduce or otherwise impair the DIP Agent's or any of the DIP Lenders' claims or the pre-petition claims or liens of the Pre-Petition Agent or the Pre-Petition Lenders, or the entry of an order which imposes an assessment, surcharge or limitation upon the DIP Lenders' collateral pursuant to section 506(c) or 552(b) of the Code, and

(14) the Debtor's termination of the employment of Saundra Pelletier as Vice President of Pharmaceuticals or Richard Vincent as Chief Financial Officer without replacing such person(s) with individuals reasonably acceptable to the DIP Agent

X TERMINATION The obligation of the DIP Lenders to make any of the Post-Petition Advances other than the obligation to fund the Professional Fee Reserve and Professional Fee Carve-Out hereunder shall automatically and immediately

terminate, unless otherwise extended by the parties hereto in writing, upon (a) August 3, 2004, or (b) the occurrence of an Event of Default The earliest to occur of the foregoing is defined as the "Termination Date" The Debtor's obligations hereunder shall otherwise terminate at such time as the Post-Petition Advances and all interest, fees and costs owing under this Agreement shall have been paid in full

XI REMEDIES In the event of (a) the failure of the Debtor to perform any of its material obligations under these DIP Loan Terms and Conditions or the DIP Order, (b) the occurrence and continuance of an Event of Default, (c) termination of the DIP Lenders' obligations to make Post-Petition Advances in accordance with Section X, or (d) the entry of an order avoiding and requiring repayment of any portion of any payments made on account of the Pre-Petition Obligations prior to the Petition Date, or any payments made on account of any Pre-Petition Obligations or Post-Petition Obligations to the extent provided in the DIP Order (other than on the grounds that such amounts were not due and payable or were not subject to valid and perfected security interests), then and upon the occurrence of any of the foregoing (each a "Termination Event"), and at all times during the continuance thereof, and without order of or application or motion to the Court, the DIP Agent may upon not less than seven (7) Business Days prior written notice to the Debtor, the United States Trustee and counsel for the Creditors Committee (unless within such seven days (7) the Court enters an Order staying or enjoining any such action), (i) terminate forthwith any commitment to extend credit pursuant to the DIP Loan Terms and Conditions, (ii) declare the Post-Petition Advances and all other Post-Petition Obligations to be immediately due and payable, and (iii) exercise any and all rights and remedies allowed under the DIP Loan Terms and

Conditions and the DIP Order; provided however that notwithstanding the foregoing and section 362 of the Code, and without order of or application or motion to the Court, if an Event of Default exists, the DIP Agent may do one or more of the following at any time and in any order (subject to the obligation to fund the Professional Fee Reserve and Professional Fee Carve-Out) (i) restrict the amount of or refuse to make Post-Petition Advances or other extensions of credit, and (ii) receive and hold the cash proceeds of the DIP Collateral for application in accordance with the DIP Loan Terms and Conditions The DIP Agent's and the DIP Lenders' failure to exercise any rights under this section shall not constitute a waiver of any of their rights

XII EFFECTIVE DATE As used herein, the term "Effective Date" shall mean the date that the Interim DIP Order is entered by the Bankruptcy Court on its docket

XIII MISCELLANEOUS

A Integration These DIP Loan Terms and Conditions supersede all prior negotiations and agreements, whether written or oral and any prior writing with respect to the subject matter hereof

B No Waiver No delay or omission to exercise any right, power, or remedy accruing to the DIP Agent upon a breach or default by the Debtor of these DIP Loan Terms and Conditions shall impair any such right, power, or remedy of the DIP Agent nor shall it be construed to be a waiver of any such breach or default, nor an acquiescence therein, or of or in any breach or default theretofore or thereafter occurring Any waiver, permit, consent or approval of any breach or default hereunder must be in

writing, and shall be effective only to the extent of such writing All remedies hereunder or otherwise afforded to the DIP Agent shall be cumulative and not alternative

C Successors and Assigns These DIP Loan Terms and Conditions, together with all extensions, amendments, and renewals thereof, shall bind and inure to the benefit of each of the party's respective successors and assigns, including any interim trustee, trustee, or examiner appointed under the Code The DIP Agent may heretofore or hereafter sell, assign, transfer, negotiate, and grant participation or subrogation rights in any of its rights hereunder

D Attorneys' and Accountants' Fees and Costs In the event of any action or proceeding at law or suit in equity in relation to the DIP Facility or in the event that the DIP Agent incurs any attorneys' fees or accountants' fees, or legal expenses or costs to protect or enforce its rights hereunder, the Debtor, in addition to all other sums which the Debtor may be called upon to pay, will reimburse the DIP Agent for the DIP Agent's reasonable attorneys' fees, accountants' fees and legal expenses and costs

E Notices Any notice required to be sent hereunder shall be deemed given and received upon the earlier of (i) telecopy or personal delivery to the addresses listed below, or (ii) three (3) calendar days after deposit in the United States mails, postage prepaid, addressed as follows

If to the DIP Agent at

CIBC WMC Inc
425 Lexington Avenue, 3rd Floor
New York, New York 10017
Attention William Phoenix
Telecopier (212) 885-4827

with a copy to counsel at

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019-6064
Attention Alan W Kornberg, Esq
Telecopier (212) 757-3990

If to the Debtor at

Women First HealthCare, Inc
5355 Mira Sorrento Place, Suite 700
San Diego, California 92121
Attention Mr Richard Vincent
Telecopy (858) 509-1887

with a copy to counsel at

Latham & Watkins LLP,
633 West Fifth Street, Suite 4000
Los Angeles, California 90071,
Attention Robert A Klyman, Esq.
Telecopier. (213) 891-8763

If to the Committee

Reed Smith LLP
1201 Market Street
Suite 1500
Wilmington, DE 19801
Attention Kurt Gwynne, Esquire and
Claudia Springer, Esquire
Telecopier (302) 778-7575

F No Third Party Beneficiary The DIP Loan Terms and Conditions shall not confer third party beneficiary rights upon any person except professional persons retained by the Debtor and the Creditors Committee

G Amendments, Supplements, Etc These DIP Loan Terms and Conditions may be amended or modified only by a written instrument executed by each

party which states specifically that it is intended to amend or modify these DIP Loan Terms and Conditions and identifies the Section or Sections to be amended or modified Any such amendment or modification will only be effective to amend or modify the specific Section or Sections so identified

II Governing Law. These DIP Loan Terms and Conditions shall be governed by, and construed in accordance with the Code, if applicable, and the laws of the State of New York, without reference to conflict of law principles

I Waiver of Jury Trial Each of the parties hereto irrevocably and unconditionally waives trial by jury in any legal action or proceeding relating to this agreement or the transactions contemplated hereby and for any counterclaim therein

J Titles and Headings Titles and headings to Sections hereof are inserted for convenience of reference only, and are not intended to be a part of, or to affect the meaning or interpretation of, these DIP Loan Terms and Conditions.

K Unenforceability If any of these DIP Loan Terms and Conditions is declared by any court or other judicial or administrative body to be null, void, or unenforceable, said provision shall survive to the extent it is not so declared, and all of the other provisions of these DIP Loan Terms and Conditions shall remain in full force and effect

ACKNOWLEDGED AND AGREED TO

Women First Healthcare, Inc
by its counsel
Robert Klyman, Esq
Latham & Watkins LLP

ACKNOWLEDGED AND AGREED TO

CIBC WMC, Inc., the DIP Agent, by its counsel
Alan W Komberg, Esq
Paul, Weiss, Rifkind, Wharton & Garrison LLP

ACKNOWLEDGED AND AGREED TO BY THE DIP LENDERS

CIBC WMC INC

By _____
Name
Title

WHITNEY PRIVATE DEBT FUND
By Whitney Private Debt GP, LLC,
its General Partner

By _____
Name
Title

ACKNOWLEDGED AND AGREED TO BY THE PRE-PETITION LENDERS

CIBC WMC INC

By _____
Name
Title

WHITNEY PRIVATE DEBT FUND
By Whitney Private Debt GP, LLC,
its General Partner

By _____
Name
Title

J. H WHITNEY MEZZANINE FUND, L P
By Whitney GP, LLC, its General Partner

By _____
Name
Title

SCHEDULE 1

BUDGET

Women First HealthCare, Inc.

Cash Forecast (in thousands)

Pharmaceuticals

Week Starting	Beg Bal	(1) (3) A/R Receipts	(4) Retainer Fees	(5) Restructuring Costs	(6) Operating Expenses	Rent & Utils	Payroll & Related	Benefits & Taxes	(7) Employee Retention	(8) Inventory UPS Log	Total Disbursements	Cumulative Disbursements	Total Net Change	DIP Advances	DIP Payments	Total Cash	DIP Running Balance
4/26/2004	97	6	-		(1)	-	(30)	-		-	(31)	N/A	(25)			72	
5/3/2004	72	19	(68)		(15)	(30)	0	(16)		(86)	(154)	(185)	(135)	399	(200)	136	399
5/10/2004	136	76	(0)		(8)	-	(71)	(2)		(14)	(96)	(250)	(20)	29		145	428
5/17/2004	145	6		-	(6)	-	(2)	(9)	-	(6)	(26)	(275)	(20)			126	428
Projections																	
5/24/2004	126	15	(0)		(32)		(66)	(0)		(13)	(132)	(407)	(117)	122	-	131	550
5/31/2004	131	15	(20)	-	(48)	(30)	(3)	(2)		(51)	(163)	(570)	(148)	153	(5)	131	703
6/7/2004	131	15	(5)	(7)	(6)	-		(22)		(7)	(46)	(616)	(31)	31	-	131	734
6/14/2004	131	15	(5)	(575)	(110)	(1)	(47)	(0)		(7)	(745)	(1,361)	(730)	730		131	1,464
6/21/2004	131	15	(5)		(27)	-		(2)		(7)	(41)	(1,403)	(26)	26	-	131	1,490
6/28/2004	131	145	(4)	(466)	(13)	(30)	(46)	(2)	(147)	(44)	(752)	(2,154)	(607)	619	(13)	131	2,110
7/5/2004	131	9	(4)	(450)	(15)	-		(17)		(7)	(492)	(2,646)	(483)	483		131	2,592
7/12/2004	131	-	(2)	-	(74)		(46)	(0)		(8)	(129)	(2,775)	(129)	129	-	131	2,722
7/19/2004	131	2,709	(2)	-	(5)	(1)		(2)		(8)	(17)	(2,792)	2,692	(2,692)	-	131	29
7/26/2004	131		(2)	(112)	(4)	(32)	(46)	-	(217)	(38)	(450)	(3,242)	(450)	471	(21)	131	501
8/2/2004	131		(2)	(3)	(16)			(14)		(8)	(42)	(3,284)	(42)	42		131	543
8/9/2004	131		(2)	(250)	(59)		(37)	-	(3)	(8)	(359)	(3,642)	(359)	359	-	131	901
8/16/2004	131		(2)	(2)	(8)	(1)		(2)		(8)	(22)	(3,664)	(22)	22		131	923
8/23/2004	131		(2)	(141)	(5)	(5)	(33)	-	(3)	(24)	(213)	(3,876)	(213)	221	(8)	131	1,144
8/30/2004	131		(2)	(100)	(5)	(25)		(14)		(8)	(153)	(4,029)	(153)	153		131	1,296
9/6/2004	131		(2)		(13)	(1)	(25)	(2)	(3)	(6)	(51)	(4,080)	(51)	51	-	131	1,347
9/13/2004	131		(2)	(84)	(4)	(9)	(12)	(0)	(32)	(5)	(147)	(4,228)	(147)	147		131	1,495
Cumulative Total		3,045	(68)	(2,188)	(472)	(184)	(484)	(107)	(405)	(389)	(4,258)		(1,213)	1,495	(248)	(5,471)	

(1) Represents expected receipts net of any credits taken by customers for product returns etc.

(2) Major wholesalers have sufficient inventory unwilling to make risk buys due to WF financial condition

(3) Assumes approximately $2 7 million of retained asset sale proceeds to be used to pay down the DIP week of 7 19-04

(4) Includes Dorrane Frano, Regulatory Kevin Dolan, Due Diligence Mgmt.

(5) Restructuring Costs include all fee estimates for the U.S. Trustee, legal investment banking activities creditor committee, court appearance travel & related, etc. and are estimated per the restructuring charges tab.

(6) Expenses are only paid if required to sustain operations (Le rent, utilities, insurance taxes, COD etc.). Note. the Company's annual liability / other insurance policies come up for renewal in early June D&O insurance is paid in full through August 2004

(7) Assumes 50% of the retention bonus is paid upon the consummation of the Vaniqa sale and remaining retention pay-outs by July 30

(8) No inventory purchase payments unless we are out of product. We are now required to pay UPS Logistics (3rd party storage, distributor and warehouse) once a week in arrears. Base monthly fees are due in the first week of subsequent month.

(9) As We Change operation shut down effective March 29, 2004 Assignment effective April 15, 2004

Note CIBC & Whitney, Elan & Wyeth No interest or principal payments are contemplated herein

SCHEDULE 2

WIRE TRANSFER INSTRUCTIONS
Women First HealthCare, Inc.

Bank	Wells Fargo 401 B Street, Suite 2201 San Diego, CA 92101
ABA#	121000248
Acct Name	Women First HealthCare
Acct #	4172321515
Contacts	Bill Heller Women First HealthCare 5355 Mira Sorrento Place, Suite 700 San Diego, CA 92121 Ph 858-509-3810

WIRE TRANSFER INSTRUCTIONS
CIBC WMC, Inc , the DIP Agent

Bank	
Account #	
ABA #	

EXHIBIT 2

BUDGET

Women First HealthCare, Inc.

Cash Forecast (in thousands)

Pharmaceuticals

Week Starting	Beg Bal	(1) (2) A/R Receipts	(4) Retainer Fees	(5) Restructuring Costs	(6) Operating Expenses	Rent & Utils	Payroll & Related	Bene's & Taxes	(7) Employee Retention	(8) Inventory UPS Log	Total Disbursements	Cumulative Disbursements	Total Net Change	DIP Advances	DIP Payments	Total Cash	DIP Running Balance
4/26/2004	97	6			(1)		(30)				(31)	N/A	(25)			72	
5/3/2004	72	19	(6)	-	(15)	(30)	0	(18)	-	(36)	(154)	(154)	(135)	399	(200)	136	399
5/10/2004	136	76	(0)		(8)		(71)	(2)		(14)	(96)	(250)	(20)	29		145	428
5/17/2004	145	6	-	-	(6)		(2)	(9)	-	(8)	(26)	(275)	(20)	-		126	428
Projections:																	
5/24/2004	126	15	(0)	-	(32)	-	(86)	(0)		(13)	(132)	(407)	(117)	122	-	131	550
5/31/2004	131	15	(20)		(48)	(30)	(3)	(2)		(81)	(183)	(670)	(148)	153	(5)	131	703
6/7/2004	131	15	(5)	(7)	(6)	-		(22)		(7)	(46)	(716)	(31)	31		131	734
6/14/2004	131	15	(5)	(575)	(110)	(1)	(47)	(0)		(7)	(745)	(1,461)	(730)	730	-	131	1,464
6/21/2004	131	15	(5)	-	(27)	-		(2)		(7)	(41)	(1,503)	(26)	26		131	1,490
6/28/2004	131	145	(4)	(466)	(13)	(30)	(46)	(2)	(147)	(44)	(752)	(2,154)	(607)	619	(13)	131	2,110
7/5/2004	131	9	(4)	(450)	(15)			(17)		(7)	(492)	(2,646)	(483)	483	-	131	2,592
7/12/2004	131	-	(2)		(74)	-	(46)	(0)		(8)	(129)	(2,775)	(129)	129	-	131	2,722
7/19/2004	131	2,709	(2)		(5)	(1)		(2)		(6)	(17)	(2,792)	2,692	(2,692)	-	131	29
7/26/2004	131		(2)	(112)	(4)	(32)	(46)	-	(217)	(38)	(450)	(3,242)	(450)	471	(21)	131	501
8/2/2004	131		(2)	(3)	(16)			(14)		(8)	(42)	(3,284)	(42)	42	-	131	543
8/9/2004	131		(2)	(250)	(59)	-	(37)	-	(3)	(6)	(358)	(3,642)	(358)	358	-	131	901
8/16/2004	131		(2)	(2)	(8)	(1)		(2)		(8)	(22)	(3,664)	(22)	22	-	131	923
8/23/2004	131		(2)	(141)	(5)	(5)	(33)		(3)	(24)	(213)	(3,876)	(213)	221	(8)	131	1,144
8/30/2004	131		(2)	(100)	(5)	(25)		(14)		(6)	(153)	(4,029)	(153)	153	-	131	1,296
9/6/2004	131		(2)		(13)	(1)	(25)	(2)	(3)	(6)	(51)	(4,080)	(51)	51	-	131	1,347
9/13/2004	131		(2)	(84)	(4)	(9)	(12)	(0)	(32)	(5)	(147)	(4,226)	(147)	147		131	1,495
Cumulative Total		3,045	(69)	(2,155)	(472)	(184)	(484)	(107)	(405)	(369)	(4,255)		(1,213)	1,495	(248)	(5,471)	

(1) Represents expected receipts net of any credits taken by customers for product returns etc.

(2) Major wholesalers have sufficient inventory, unwilling to make risk buys due to WF financial condition

(3) Assumes approximately $2.7 million of retained asset sale proceeds to be used to pay down the DIP week of 7 19-04

(4) Includes Dorrane Frano Regulatory, Kevin Dolan, Due Diligence Mgmt.

(5) Restructuring Costs include all fee estimates for the U.S. Trustee, legal, investment banking activities, creditor committee, court appearance travel & related, etc. and are estimated per the restructuring charges tab

(6) Expenses are only paid if required to sustain operations (i.e., rent, utilities, insurance, taxes, COD, etc.) Note, the Company's annual liability / other insurance policies come up for renewal in early June D&O insurance is paid in full through August 2004

(7) Assumes 50% of the retention bonus is paid upon the consummation of the Vanige sale, and remaining retention pay-outs by July 30.

(8) No inventory purchase payments unless we are out of product. We are now required to pay UPS Logistics (3rd party storage, distributor and warehouse) once a week in arrears. Base monthly fees are due in the first week of subsequent month.

(9) As We Change operation shut down effective March 29, 2004 Assignment effective April 15, 2004

Note: CIBC & Whitney Elan & Wyeth No interest or principal payments are contemplated herein

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RANDOLPH E PAUL (1946-1956)
SIMON H RIFKIND (1950-1995)
LOUIS S WEISS (1927 1950)
JOHN F WHARTON (1927 1977)

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WRITER S DIRECT FACSIMILE

212-492-0180

WRITER S DIRECT E MAIL ADDRESS

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MARK A UNDERBERG
MARIA T VULLO
THEODORE V WELLS JR
STEVEN L WOLFRAM
LISA YANO
JORDAN E YARETT
ALFRED D YOUNGWOOD

NOT ADMITTED TO NEW YORK BAR

August 26, 2004

Via Federal Express

Claims Agent
Women First HealthCare, Inc
c/o BMC Group, f/k/a Bankruptcy Management Corp
1330 East Franklin Ave
El Segundo, CA 90245

Re Women First Health Care, Inc Case No 05-11278-MFW

Dear Sir/Madam

Enclosed for filing in the above-referenced cases are the originals of proofs of claim (four) to be filed on behalf of the following entities

(i) Broad Street Associates, LLC,

(ii) GreenLeaf Capital, L P ,

(iii) J H Whitney Mezzanine Fund, L P , and

(iv) Whitney Private Debt Fund

We are also enclosing copies of each of these proofs of claim (four)

Please time-stamp these four copies and return them to me for my records in the enclosed self-addressed envelope

Regards,

Jeremy S. Gladstone

Enclosures

c/o BMC Group, f/k/a Bankruptcy Management Corp
1330 East Franklin Ave
El Segundo, CA 90245

SPECIAL INSTRUCTIONS

BY FEDERAL EXPRESS

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2ND FLOOR MAILROOM
NEW YORK, NY 10019
UNITED STATES US

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TO WOMEN FIRST HEALTHCARE INC.
BMC GROUP/BANKRUPTCY MGMT CORP
1330 EAST FRANKLIN AVENUE

EL SEGUNDO, CA 90245

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