
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act

Date of Report: August 23, 2004
(Date of Earliest Event Reported)

Akorn, Inc.

(Exact Name of Registrant as Specified in its Charter)

Louisiana
(State or other
Jurisdiction of
Incorporation)

0-13976
(Commission
File Number)

72-0717400
(I.R.S. Employer
Identification No.)

2500 MILLBROOK DRIVE
BUFFALO GROVE, ILLINOIS
(Address of principal executive offices)

(847) 279-6100
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (See General Instruction A.2. below):

- Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communication pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communication pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 3.02. Unregistered Sales of Equity Securities.

Private Placement of \$14,100,000 in Preferred Stock and Warrants

On August 23, 2004 (the "Closing Date"), Akorn, Inc. (the "Company") completed a private placement of 141,000 shares of its Series B 6.0% Participating Convertible Preferred Stock ("Series B Preferred Stock") at a price of \$100.00 per share, convertible into common stock at a price of \$2.70 per share, to certain investors with warrants to purchase 1,566,667 additional shares exercisable until August 23, 2009, with an exercise price of \$3.50 per share (the "Warrants"). The net proceeds to the Company after payment of investment banker fees and expenses to Leerink Swann & Company of approximately \$869,000, were approximately \$13,231,000. The net proceeds will be used for working capital and general corporate purposes, and to pay off the Company's outstanding debt under the Credit Agreement dated October 7, 2003 (the "Credit Agreement") among the Company, Akom (New Jersey), Inc., the lenders party thereto and LaSalle Bank National Association ("LaSalle"), which consented to the transaction. The private placement was made to investors meeting the accredited investor definition of Rule 501 of the Securities Act of 1933, as amended (the "Act"). The sales were made in a private placement under Section 4(2) of the Act and/or Rule 506 of Regulation D under the Act, pursuant to the terms of the Subscription Agreements (each a "Subscription Agreement") entered into by the Company and each of the investors.

On August 23, 2004, the Company filed Articles of Amendment to Articles of Incorporation of the Company ("Articles of Amendment") to provide for the rights, preferences and privileges of the Series B Preferred Stock. The Series B Preferred Stock accrues dividends at a rate of 6.0% per annum, which rate is fully cumulative, accrues daily and compounds quarterly. All shares of Series B Preferred Stock have liquidation rights in preference over junior securities, including common stock, and have certain antidilution protections. The Series B Preferred Stock and unpaid dividends are convertible by the holders thereof at any time into a number of shares of common stock equal to the quotient obtained by dividing (x) \$100 per share plus any accrued but unpaid dividends on that share by (y) \$2.70, as such numbers may be adjusted from time to time pursuant to the terms of the Articles of Amendment. The Company has the option of converting all shares of Series B Preferred Stock to shares of common stock on any date after August 23, 2009 as to which the closing price per share of common stock for at least 20 consecutive trading days immediately preceding such date exceeds \$5.00 per share.

Each holder of Series B Preferred Stock is entitled to a number of votes equal to the number of shares of common stock into which its shares can be converted. Holders of Series B Preferred Stock and common stock shall vote together as a single class on all matters submitted to a shareholder vote, except in cases where a separate vote of the holders of Series B Preferred Stock is required by law or by the Articles of Amendment. The Articles of Amendment provide that the Company cannot take certain actions, including, without limitation, (i) issuing additional Series B Preferred Stock or securities senior to or on par with the Series B Preferred Stock, (ii) amending the Company's Articles of Incorporation or By-laws to alter the rights of the Series B Preferred Stock, (iii) effecting a change of control or (iv) effecting a reverse split of the Series B Preferred Stock, without the approval of the holders of 50.01% of the Series B Preferred Stock.

The shares of common stock issuable upon conversion of the Series B Preferred Stock and exercise of the Warrants are subject to certain registration rights as set forth in the Subscription Agreements. Under the Subscription Agreements, the Company agreed to file a registration statement (the "Registration Statement") with the Securities and Exchange Commission (the "Commission") by the thirtieth day after the Closing Date or September 22, 2004 (the "Filing Date"), for purposes of registering the shares of common stock issuable upon conversion of Series B Preferred Stock and exercise of the Warrants (collectively, the "Registrable Securities"). The Registration Statement is to be on Form S-1. The Company agreed to maintain the effectiveness of the Registration Statement until the earlier of: (i) the holders of Registrable Securities having completed the distribution of the Registrable Securities described in the Registration Statement, or (ii) with respect to any holder of Registrable Securities, such time as all Registrable Securities then held by such holder may be sold in compliance with Rule 144 under the Act, within any three-month period (the "Registration Period").

If the Registration Statement is not declared effective within 120 days from the Closing Date (or if the SEC issues any stop order(s) suspending the effectiveness of the Registration Statement for a period of more than 60 days during such 120 day period), the Company will pay to each holder an amount equal to 1.0% of the purchase price (the "1.0% Penalty") for the shares of Series B Preferred Stock purchased by such holder for every 30 days during which the Registration Statement is not effective, until the earlier to occur of (i) the Registration Statement becomes effective, (ii) the end of the Registration Period, or (iii) the exercise by the holder of the Put Option (defined below). If the Registration Statement is not declared effective within 270 days from the Closing Date, each holder will have the right, for a period of 60 days following the end of such 270 day period, to compel the Company to purchase its shares of Series B Preferred Stock for cash in an amount equal to \$115 per share (the "Put Option" and together with the 1.0% Penalty, the "Penalty Provisions").

The right to receive payments in cash pursuant to the Penalty Provisions is subordinate to the Company's obligations under the Credit Agreement. In place of any cash payment otherwise due to a holder of Series B Preferred Stock pursuant to the 1.0% Penalty, the Company may, in its discretion, pay such holder the number of fully paid, validly issued and non-assessable shares of common stock equal to the number obtained by dividing the amount of (x) the cash payment due by (y) the closing price of the common stock, or the average of the reported closing bid and asked prices of such common stock as determined under the Subscription Agreement, on the date immediately preceding the date such cash payment is otherwise due.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Changes in Fiscal Year.

See Item 3.02 above.

Item 9.01 Financial Statements and Exhibits.

(c) Exhibits.

3.1 Articles of Amendment to Articles of Incorporation filed August 23, 2004.

4.1 Form of Subscription Agreement dated August 18, 2004, between the Company and various investors.

4.2 Form of Common Stock Purchase Warrant dated August 23, 2004.

10.1 Engagement Letter dated August 5, 2004 between Leerink Swann & Company and the Company.

10.2 Waiver and Consent to Credit Agreement dated August 23, 2004, among LaSalle Bank National Association, the financial institutions party thereto, the Company and Akorn (New Jersey), Inc.

10.3 Consent and Agreement of Holders of Series A 6.0% Participating Convertible Preferred Stock of Akorn, Inc. dated as of August 17, 2004.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Current Report on Form 8-K to be signed on its behalf by the undersigned hereunto duly authorized.

Akom, Inc.

By: /s/ Jeffrey A. Whitnell

Jeffrey A. Whitnell
Chief Financial Officer, Treasurer and Secretary

Date: August 24, 2004

ARTICLES OF AMENDMENT
to
ARTICLES OF INCORPORATION
of
AKORN, INC.

Pursuant to Section 33 of the Louisiana Business Corporation Law (“LBCL”) and Article V(B) of its articles of incorporation (the “Articles”), Akorn, Inc., a Louisiana corporation (the “Corporation”), acting through its undersigned President and Chief Executive Officer, does hereby certify as follows:

(i) Immediately prior hereto, the authorized capital stock of the Corporation consisted of (i) 150,000,000 shares of common stock, no par value per share, of which 20,612,684 shares were issued and outstanding; and (ii) 5,000,000 shares of preferred stock, \$1.00 par value per share, of which 257,172 shares of Series A 6.0% Participating Convertible Preferred Stock (the “Series A Preferred Stock”) were issued and outstanding pursuant to the Articles of Amendment filed with the Louisiana Secretary of State on October 6, 2003 (the “Series A Preferred Stock Designations”). The preferences, limitations and relative rights of the Series A Preferred Stock are as set forth in the Series A Preferred Stock Designations, and the authority vested in the Board of Directors of the Corporation (the “Board of Directors”) to amend the Articles of Incorporation to fix the relative rights, preferences and limitations of the shares of any class and to establish and fix variations in relative rights as between series of any preferred or special class, are as set forth in the Articles of Amendment filed with the Louisiana Secretary of State on March 3, 1997; and

(ii) On August 18, 2004, the Board of Directors of the Corporation duly adopted resolutions approving an amendment to the Corporation’s Articles to add a new paragraph (D) to Article V, reading in its entirety as follows:

D. A series of authorized Preferred Stock, par value \$1.00 per share, of the Corporation is hereby created having the designation and amount, the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions set forth below.

SECTION 1. DESIGNATION AND AMOUNT.

The shares of such series shall be designated as the “Series B 6.0% Participating Convertible Preferred Stock” (the “Series B Preferred Stock”) and the number of shares constituting such series shall be 170,000 shares of Series B Preferred Stock.

SECTION 2. RANK.

The Series B Preferred Stock shall, with respect to payment of dividends, distributions and the distribution of assets upon liquidation, winding up or dissolution, rank (i) senior to all Junior Securities, (ii) on a parity with all Parity Securities and (iii) junior to all Senior Securities.

SECTION 3. DIVIDENDS AND DISTRIBUTIONS.

(a) Payment and Accrual of Dividends.

(i) The holders of shares of Series B Preferred Stock shall be entitled to receive on each Dividend Payment Date, in respect of the Dividend Period ending on (and including) the date immediately prior to such Dividend Payment Date, dividends on each share of Series B Preferred Stock at the rate of 6.0% (the "Dividend Rate") per annum on the Accrued Value thereof from and after the Issuance Date, provided that with respect to the Initial Dividend Period, the dividends set forth above shall be prorated based on the number of days in such period. Such dividends shall be fully cumulative and accumulate and accrue on a daily basis (computed on the basis of a 360-day year of twelve 30-day months) and compound quarterly in arrears on the Dividend Payment Dates at the rate indicated above and in the manner set forth herein, whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. If the Corporation at any time does not have a sufficient number of shares of Common Stock duly authorized and reserved for issuance upon conversion of all of the outstanding shares of Series B Preferred Stock, shares of the Series B Preferred Stock shall accrue dividends at a rate equal to 10.0% per annum of the Accrued Value, accruing and compounding in the manner set forth in this Section 3(a) from such date until such shares are converted into shares of Common Stock, in each case in accordance with this Article V(D).

(ii) Such dividends shall, at the option of the Company, either be paid in cash or accrue and compound and be added to the Accrued Value on the applicable Dividend Payment Dates, provided, however, that all dividends payable on any given Dividend Payment Date must either (i) all be paid in cash or (ii) all accrue and compound and be added to the Accrued Value, in each case on the Dividend Payment Date. Each such dividend which is payable in cash shall be payable on the Dividend Payment Date to the holders of record of shares of the Series B Preferred Stock, as they appear on the transfer books of the Corporation at the close of business on the day immediately preceding such Dividend Payment Date. Any dividend that is not otherwise paid in cash on the applicable Dividend Payment Date (whether due to the Company's election not to pay such dividend in cash, its inability to pay such dividend in cash, or otherwise) shall automatically, and without any action on the part of the Corporation, accrue and compound and be added to the Accrued Value on such Dividend Payment Date.

(b) Additional Dividends. In addition to dividends payable pursuant to Section 3(a) hereof, in the event any dividends are declared or paid or any other distribution is made on or with respect to the Common Stock, the holders of the Series B Preferred Stock as of the record date established by the Board of Directors for such dividend or distribution on the Common Stock shall be entitled to receive as additional dividends (the "Additional Dividends") an amount (whether in the form of cash, securities or other property) equal to the amount (and in

the form) of the dividends or distribution that such holder would have received had the Series B Preferred Stock been converted into Common Stock (without regard to any limitation on conversion contained herein, the availability of authorized and unissued shares for issuance upon conversion, or otherwise) as of the date immediately prior to the record date of such dividend or distribution on the Common Stock; provided, however, that if the Corporation declares and pays a dividend or makes a distribution on the Common Stock consisting in whole or in part of Common Stock or Convertible Securities, then no such dividend or distribution shall be payable in respect of the Series B Preferred Stock on account of the portion of such dividend or distribution on the Common Stock payable in Common Stock or Convertible Securities to the extent that the applicable anti-dilution adjustment under Section 7(b)(i) below shall be made in connection therewith. The record date for any such Additional Dividends shall be the record date for the applicable dividend or distribution on the Common Stock, and any such Additional Dividends shall be payable on the same payment date as the payment date for the dividend on the Common Stock established by the Board of Directors.

(c) Restricted Payments.

(i) Junior Securities. So long as any shares of Series B Preferred Stock remain outstanding, the Corporation shall not, directly or indirectly, make any Junior Securities Distribution unless (A) all accrued and unpaid dividends on the shares of Series B Preferred Stock shall have been paid in cash and (B) sufficient consideration shall have been paid or set apart for the payment of the dividend for the current Dividend Period with respect to the Series B Preferred Stock and the current dividend period with respect to any Parity Securities.

(ii) Parity Securities. So long as any shares of Series B Preferred Stock remain outstanding, the Corporation shall not make any Parity Securities Distribution unless (A) all accrued and unpaid dividends on the shares of Series B Preferred Stock shall have been paid in cash and (B) sufficient consideration shall have been paid or set apart for the payment of the dividend for the current Dividend Period with respect to the Series B Preferred Stock and the current dividend period with respect to any Parity Securities; provided, that, dividends may be declared and paid on Parity Securities if dividends are declared and paid on the Series B Preferred Stock (in accordance with the terms of Section 3(a)) ratably in proportion to the respective aggregate amounts of dividends accumulated and unpaid on such Parity Securities and accumulated and unpaid on the Series B Preferred Stock.

(d) Priority With Respect to Junior Securities. Holders of shares of Series B Preferred Stock shall be entitled to receive the dividends provided for in this Section 3 in preference to and in priority over any dividends upon any Junior Securities.

SECTION 4. REDEMPTION.

The Corporation shall have no right to redeem any shares of Series B Preferred Stock.

SECTION 5. LIQUIDATION, DISSOLUTION OR WINDING UP.

(a) In the event the Corporation shall (i) commence a voluntary case under the Federal bankruptcy laws or any other applicable Federal or state bankruptcy, insolvency or similar law, (ii) consent to the entry of an order for relief in an involuntary case under such law or to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Corporation, or of any substantial part of its property, (iii) make an assignment for the benefit of its creditors, (iv) admit in writing its inability to pay its debts generally as they become due, (v) enter into a transaction which results in a Change of Control of the Corporation, or (vi) otherwise liquidate, dissolve or wind up (any such event, a "Liquidation"), each holder of Series B Preferred Stock shall be entitled to receive out of assets of the Corporation available for distribution to its shareholders, in preference to any distribution to holders of Junior Securities an amount of cash with respect to each share of Series B Preferred Stock held by such holder equal to the Liquidation Preference.

(b) No full preferential payment on account of any Liquidation shall be made to the holders of any class of Parity Securities unless there shall likewise be paid at the same time to the holders of the Series B Preferred Stock the full amounts to which such holders are entitled with respect to such Liquidation. If, upon any Liquidation, after the distribution of the liquidation preferences to Senior Securities, if any, the assets of the Corporation are not sufficient to pay in full the liquidation payments payable to the holders of the outstanding Series B Preferred Stock and outstanding shares of Parity Securities, then the holders of all such shares shall share ratably in such distribution of assets in accordance with the full respective preferential payments that would be payable on such shares of Series B Preferred Stock and such shares of Parity Securities if all amounts payable thereon were payable in full.

(c) After the payment to the holders of shares of the Series B Preferred Stock of the full amount of any liquidating distribution to which they are entitled under this Section 5, the holders of the Series B Preferred Stock as such shall have no right or claim to any of the remaining assets of the Corporation.

SECTION 6. VOTING RIGHTS.

(a) General. Each holder of Series B Preferred Stock shall have full voting rights and powers, and shall be entitled to vote on all matters put to a vote or consent of shareholders of the Corporation, other than matters on which only one or a limited number of specified classes or series of shares (other than the Series B Preferred Stock) or other instruments is entitled by law or these articles of incorporation to vote or consent, with each holder of shares of Series B Preferred Stock having the number of votes equal to the quotient obtained by dividing (x) the sum of (i) the aggregate Stated Value of such shares as of the record date for the vote or consent which is being taken, or if no such record date is established, on the date such vote is taken or any consent of shareholders is solicited plus (ii) an amount equal to the aggregate of all accrued but unpaid dividends (whether or not declared) on such shares as of such date by (y) the Conversion Price as of such date. The holders of the Series B Preferred Stock, the holders of the Series A Preferred Stock, and the holders of Common Stock shall vote together as a single class on all matters submitted to a vote of the shareholders of the Corporation, except in cases where a vote of the holders of the Series B Preferred Stock, voting separately as a class, is

required by law or by this Article V(D). The holders of the Series B Preferred Stock shall vote as part of a single class with the holders of Common Stock, the holders of the Series A Preferred Stock and the holders of other voting stock and instruments of the Corporation, if any, on all matters submitted to a vote of the shareholders of the Corporation, except in cases where a vote of the holders of the Series B Preferred Stock or the holders of only one or more other specified classes or series of shares or other instruments, voting separately as a class, is required by law or by these articles of incorporation. Holders of Series B Preferred Stock shall be entitled to notice of all shareholders meetings in accordance with the procedures set forth in the Corporation's Bylaws.

(b) Voting With Respect to Certain Matters. In addition to any matters requiring a separate vote of the Series B Preferred Stock under applicable law, the Corporation shall not, without the prior consent or approval of the holders of at least 50.01% of the issued and outstanding shares of Series B Preferred Stock, voting as a single class:

(i) amend, alter, repeal, restate, or supplement its Articles of Incorporation, Bylaws or this Article V(D) in a manner that alters or changes, in any adverse manner, the powers, preferences, privileges or rights of the Series B Preferred Stock or which otherwise would adversely affect the rights, privileges or preferences of the Series B Preferred Stock;

(ii) authorize, issue or otherwise create any shares of Senior Securities, Parity Securities, additional shares of Series B Preferred Stock, or any other debt or equity securities of the Corporation that by their terms are convertible into, or exchangeable or exercisable for, shares of Senior Securities, Parity Securities or additional shares of Series B Preferred Stock, or reissue any shares of Series B Preferred Stock which have been reacquired by the Corporation;

(iii) effect any transaction which would result in a Change of Control of the Corporation;

(iv) authorize or otherwise effectuate a reverse stock split of the Series B Preferred Stock;

(v) increase the par value of the Common Stock;

(vi) enter into any agreement, commitment, understanding or other arrangement to take any of the actions in subparagraphs (i) through (v) above; or

(vii) cause or authorize any subsidiary of the Corporation to engage in any of the foregoing actions.

SECTION 7. CONVERSION.

(a) Terms of Conversion. Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time, and from time to time, on the terms and conditions set forth in this Section 7, into a number of fully paid and non-assessable shares of Common Stock equal to the quotient obtained by dividing (x) the sum of (i) the Stated Value

plus (ii) an amount equal to the aggregate of all accrued but unpaid dividends (whether or not declared) on such share calculated through and including the date of such conversion by (y) the Conversion Price in effect on the date of such conversion.

(b) Adjustment of Conversion Price. The Conversion Price shall be subject to adjustment from time to time as follows:

(i) Stock Dividends, Splits, etc. In case the Corporation shall at any time or from time to time after the Issuance Date (A) declare a dividend or make a distribution on the outstanding shares of Common Stock or securities convertible into Common Stock, in either case, in shares of Common Stock or (B) effect a subdivision, combination, consolidation or reclassification of the outstanding shares of Common Stock into a greater or lesser number of shares of Common Stock, then, and in each such case, the Conversion Price in effect immediately prior to such event or the record date therefor, whichever is earlier, shall be adjusted by multiplying such Conversion Price by a fraction of which (x) the numerator is the number of shares of Common Stock that were outstanding immediately prior to such event and (y) the denominator is the number of shares of Common Stock outstanding immediately after such event. An adjustment made pursuant to this Section 7(b)(i) shall become effective (x) in the case of any such dividend or distribution, immediately after the close of business on the date for the determination of holders of shares of Common Stock entitled to receive such dividend or distribution, or (y) in the case of any such subdivision, combination, consolidation or reclassification, at the close of business on the day upon which such corporate action becomes effective.

(ii) Below Market or Conversion Price Issuances. In case the Corporation shall at any time or from time to time after the Issuance Date issue or sell any Common Stock or Convertible Security (collectively, "Additional Shares") without consideration or for a consideration per share (or having a conversion, exchange or exercise price per share) less than the greater of (A) the Closing Price per share of Common Stock on the Business Day immediately preceding the earlier of the issuance, or public announcement of the issuance, of such Additional Shares and (B) the Conversion Price as of the date of such issuance then, and in each such case, the Conversion Price shall be reduced to an amount determined by multiplying the Conversion Price in effect on the day immediately prior to such date by a fraction of which (x) the numerator is the sum of (i) the product of (A) the number of shares of Common Stock outstanding immediately prior to such sale or issuance multiplied by (B) the greater of (1) the then applicable Conversion Price per share and (2) the Closing Price per share of Common Stock on the date preceding the earlier of the issuance or public announcement of the issuance of such Additional Shares (the greater of (1) and (2) above hereinafter referred to as the "Adjustment Price") and (ii) the aggregate consideration receivable by the Corporation for the total number of shares of Common Stock so issued (or into or for which the Convertible Securities are convertible, exercisable or exchangeable), and (y) the denominator equals the product of (i) the sum of (A) the total number of shares of Common Stock outstanding immediately prior to such sale or issue and (B) the number of additional shares of Common Stock issued (or into or for which the Convertible Securities may be converted, exercised or exchanged), multiplied by (ii) the Adjustment Price. An adjustment made pursuant to this subsection (ii) shall be made on the next Business Day following the date on which any such issuance is made and shall be effective retroactively to the close of business on the date of such issuance. Notwithstanding the

foregoing, no adjustment (other than as provided for in Section 7(b)(iv)(5)(D)) shall be made pursuant to this Section 7(b)(ii) in connection with any Excluded Issuances.

(iii) Special Dividends; Repurchases. In case the Corporation after the Issuance Date shall (1) distribute to all holders of shares of Common Stock or other series of capital stock of the Corporation (other than the Series B Preferred Stock) evidences of its indebtedness, assets (excluding any regular periodic cash dividend but including any extraordinary cash dividend), capital stock (other than Common Stock) or rights to subscribe for capital stock (other than Common Stock), or (2) purchase or otherwise acquire for value any shares of Common Stock in an Above Market Repurchase, in each such case the Conversion Price in effect immediately prior to the date of such distribution (or the date immediately prior to the date of the public announcement of such distribution, whichever is earlier) or date of such purchase (or the date immediately prior to the date of the public announcement of such purchase), as applicable, shall be adjusted by multiplying such Conversion Price by a fraction of which (x) the numerator is the remainder (if greater than zero) of (i) the Closing Price per share of Common Stock on such date, minus (ii) the Fair Market Value as of such date of the portion of assets, evidences of indebtedness, capital stock or subscription rights so distributed or paid applicable to one share of Common Stock, and (y) the denominator is the Closing Price per share of Common Stock on such date, such adjustment to become effective immediately prior to the opening of business on the day following the date of distribution or purchase; provided, however, that no adjustment shall be made pursuant to clause (1) of this subparagraph (b)(iii) (A) to the extent each holder of Series B Preferred Stock receives such evidences of indebtedness, assets, capital stock or rights to subscribe for capital stock, as applicable, as Additional Dividends in accordance with the terms of Section 3(b), (B) if such issuance is an Excluded Issuance or (C) if an adjustment shall otherwise be made with respect to such distribution or issuance pursuant to Section 7(b)(ii); and further provided, however, that if in any case the numerator of such fraction shall be zero or less than zero, no adjustment shall be made in such case. The Corporation shall provide any holder of Series B Preferred Stock, upon receipt of a written request therefor, with any indenture or other instrument defining the rights of the holders of any indebtedness, assets, subscription rights or capital stock referred to in this subparagraph (b)(iii).

(iv) General. For the purposes of any adjustment of the Conversion Price pursuant to paragraph (ii) of this Section 7(b), the following provisions shall be applicable:

(1) In the case of the issuance of Common Stock or Convertible Securities for cash in a public offering or private placement, the aggregate consideration shall be deemed to be the amount of cash paid before deducting any discounts, commissions or placement fees payable by the Corporation to any underwriter or placement agent in connection with the issuance and sale thereof.

(2) In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, such consideration shall be deemed to be the Fair Market Value thereof.

(3) Subparagraph (2) above notwithstanding, in the case of the issuance of Additional Shares to the owners of the non-surviving entity in connection with any merger in which the Corporation is the surviving corporation, the amount of

consideration therefore shall be deemed to be the Fair Market Value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock or Convertible Securities, as the case may be.

(4) If Common Stock is sold as a unit with other securities, the aggregate consideration received for such Common Stock shall be deemed to be net of the Fair Market Value of such other securities.

(5) In the case of the issuance of Convertible Securities:

(A) The aggregate maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent reduction of such number) deliverable upon conversion of or in exchange for, or upon the exercise of, such Convertible Securities and subsequent conversion, exchange or exercise thereof shall be deemed to have been issued at the time such Convertible Securities were issued and for a consideration equal to the consideration received by the Corporation for any such Convertible Securities, plus the minimum amount of consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent increase of consideration), if any, to be received by the Corporation upon the conversion, exercise or exchange of such Convertible Securities;

(B) With respect to any Convertible Securities issued after the Issuance Date for which an adjustment to the Conversion Price previously has been made pursuant to Section 7(b)(ii), on any increase in the number of shares of Common Stock deliverable upon exercise, conversion or exchange of, or a decrease in the exercise price of, such Convertible Securities, the applicable Conversion Price shall forthwith be readjusted retroactively to give effect to such increase or decrease;

(C) With respect to any Convertible Securities issued after the Issuance Date for which an adjustment to the Conversion Price has previously not been made pursuant to Section 7(b)(ii), if there is any increase in the number of shares of Common Stock deliverable upon exercise, conversion or exchange of, or a decrease in the exercise price of, such Convertible Securities, such Convertible Securities shall be treated as if they had been cancelled and reissued and an adjustment to the Conversion Price with respect to such deemed issuance shall be made pursuant to Section 7(b)(ii), if applicable;

(D) With respect to any Convertible Securities issued prior to the Issuance Date, if there is any increase in the number of shares of Common Stock deliverable upon exercise, conversion or exchange of, or a decrease in the exercise price of, such Convertible Securities other than a change resulting from the anti-dilution provisions thereof, such Convertible Securities shall be treated as if they had been cancelled and reissued and an adjustment to the Conversion Price with respect to such deemed issuance shall be made pursuant to Section 7(b)(ii), if applicable; and

(E) No further adjustment of the Conversion Price adjusted upon the issuance of any such Convertible Securities shall be made as a result of

the actual issuance of Common Stock upon the exercise, conversion or exchange of any such Convertible Securities.

(v) Rights Distributions. Rights or warrants issued by the Corporation to all holders of Common Stock entitling the holders thereof to subscribe for or purchase capital stock of the Corporation, which rights or warrants (1) are deemed to be transferred with such shares of Common Stock, (2) are not exercisable and (3) are also issued in respect of future issuances of Common Stock, including shares of Common Stock issued upon conversion of shares of Series B Preferred Stock, in each case in clauses (1) through (3) until the occurrence of a specified event, shall for purposes of subparagraphs (b)(ii) and (b)(iii) not be deemed issued until the occurrence of the earliest such specified event.

(vi) Calculations. All calculations of the Conversion Price shall be made to the nearest five decimal places. Anything in Section 7(b) to the contrary notwithstanding, in no event shall the then current Conversion Price be increased as a result of any calculation made at any time pursuant to Sections 7(b)(ii) through 7(b)(iv). No adjustment to the Conversion Price pursuant to paragraph 7(b) shall be required unless such adjustment would require an increase or decrease of at least 1% in the Conversion Price; provided, however, that any adjustments which by reason of this paragraph 7(b)(vii) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. Notwithstanding any other provision of this Section 7(b), no adjustment to the Conversion Price shall reduce the Conversion Price below \$0.01, and any such purported adjustment shall instead reduce the Conversion Price to \$0.01.

(vii) Outstanding Shares. The number of shares of Common Stock at any time outstanding shall include all shares of Common Stock outstanding at such time and any shares of Common Stock issuable upon conversion of or in exchange for any convertible or exchangeable security or upon the exercise of any option. The number of shares of Common Stock at any time outstanding shall not include any shares of Common Stock then owned or held by or for the account of the Corporation or any Subsidiary, and the disposition of any shares so owned or held shall be considered an issue or sale of Common Stock.

(viii) Successive Adjustments. Successive adjustments in the Conversion Price shall be made, without duplication, whenever any event specified in Sections 7(b)(i) through 7(b)(iii) shall occur.

(c) Reorganization, Consolidation, Merger, Asset Sale.

(i) In case of any capital reorganization or reclassification of outstanding shares of Common Stock (other than a reclassification covered by Section 7(b)), or in case of any consolidation or merger of the Corporation with or into another Person, or in case of any sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation) of all or substantially all of the Corporation's assets, on a consolidated basis, in one transaction or a series of related transactions, to any Person (including any group that is deemed to be a Person) not otherwise constituting a Liquidation in accordance with Section 5 (each of the foregoing being referred to as a "Transaction"), in each case which is effected in such a manner that the holders of Common Stock are entitled to receive (either directly or upon

subsequent liquidation) stock or other securities or property (including cash) with respect to or in exchange for Common Stock, shares of Series B Preferred Stock then outstanding shall thereafter be convertible into, in lieu of the Common Stock issuable upon such conversion prior to the consummation of such Transaction, the kind and amount of shares of stock and other securities and property (including cash) receivable upon the consummation of such Transaction by a holder of that number of shares of Common Stock into which one share of Series B Preferred Stock was convertible (without regard to any limitation on conversion contained herein, the availability of authorized and unissued shares for issuance upon conversion, or otherwise) immediately prior to the consummation of such Transaction. In any such case, the Corporation or the person formed by the consolidation or resulting from the merger or which acquires such assets or which acquires the Corporation's shares, as the case may be, shall make or cause to be made appropriate provisions (as determined in good faith by the Board of Directors) in the applicable agreement of merger or consolidation, its certificate or articles of incorporation or other constituent documents to ensure that the provisions of Sections 2-3, 4(b)-(f) and 5-7 herein will continue to be applicable to the Series B Preferred Stock or any such other shares of stock and other securities (other than Common Stock) and property deliverable upon conversion of the shares of Series B Preferred Stock remaining outstanding following the Transaction. In case securities or property other than Common Stock shall be issuable or deliverable upon conversion as aforesaid, then all references in this Section 7 shall be deemed to apply, so far as appropriate and as nearly as may be, to such other securities or property. The provisions of this Section 7(c) shall similarly apply to successive Transactions. The Corporation shall give written notice to the holders of Series B Preferred Stock at least 30 days prior to the date on which any Transaction or Change of Control or similar transaction affecting the Corporation shall take place.

(ii) Notwithstanding anything contained herein to the contrary, the Corporation will not effect any Transaction unless, prior to the consummation thereof, the Surviving Person, if other than the Corporation, shall mail, by first-class mail, postage prepaid, to each record holder of shares of Series B Preferred Stock, at such holder's address as it appears on the transfer books of the Corporation, (A) a written instrument assuming the obligation to deliver to such holder such cash, property and securities to which, in accordance with the foregoing provisions, such holder is entitled, and (B) an opinion of outside counsel for such Surviving Person stating that such assumption agreement is a valid, binding and enforceable agreement of the Surviving Person.

(iii) Nothing contained in this Section 7(c) shall limit the rights of holders of the Series B Preferred Stock to convert the Series B Preferred Stock or to vote their shares of Series B Preferred Stock in connection with a Transaction.

(d) Reports. Whenever the number of shares of Common Stock into which each share of Series B Preferred Stock is convertible is adjusted as provided in this Section 7, the Corporation shall promptly mail to the holders of record of the outstanding shares of Series B Preferred Stock, at their respective addresses as the same shall appear in the Corporation's transfer books, a certificate signed by an executive officer stating that the number of shares of Common Stock into which the shares of Series B Preferred Stock are convertible has been adjusted (setting forth in reasonable detail and certifying the calculation of such adjustment), the new number of shares of Common Stock (or describing the new stock, securities, cash or other property) into which each share of Series B Preferred Stock is convertible as a result of such

adjustment, a brief statement of the facts requiring such adjustment and when such adjustment became effective. The Corporation shall give the holders of Series B Preferred Stock written notice at least 20 days prior to the date on which the Corporation closes its books or takes a record (i) with respect to any dividend or distribution upon Common Stock, (ii) with respect to any pro rata subscription offer to holders of Common Stock or (iii) for determining rights to vote with respect to any Transaction.

(e) Conversion Procedures.

(i) The holder of any shares of Series B Preferred Stock may exercise its right to convert any or all such outstanding shares into shares of Common Stock at any time by surrendering for such purpose to the Corporation, at its principal office or at such other office or agency maintained by the Corporation for that purpose, a certificate or certificates representing the shares of Series B Preferred Stock to be converted, duly endorsed to the Corporation in blank, accompanied by a written notice stating that such holder elects to convert all or a specified whole number of such shares in accordance with the provisions of this Section 7. The Corporation will pay any and all documentary, stamp or similar issue or transfer tax that may be payable in respect of any issue or delivery of shares of Common Stock to the holder on conversion of the Series B Preferred Stock pursuant hereto.

(ii) As promptly as practicable, and in any event within three Business Days after the surrender of such certificate or certificates and the receipt of such notice relating thereto and, if applicable, payment of all transfer taxes (or the demonstration to the reasonable satisfaction of the Corporation that such taxes are inapplicable), the Corporation shall deliver or cause to be delivered (i) certificates (which shall bear legends, if appropriate) registered in the name of such holder representing the number of full shares of Common Stock to which the holder of shares of Series B Preferred Stock so converted shall be entitled, provided that, if the Corporation's transfer agent is participating in the Depository Trust Company ("DTC") Fast Automated Securities Transfer program, and so long as the certificates therefore do not bear a legend (pursuant to the terms of the Subscription Agreement) and the holder thereof is not then required to return such certificate for the placement of a legend thereon (pursuant to the terms of the Subscription Agreement), the Corporation shall cause its transfer agent to promptly electronically transmit the Common Stock issuable upon conversion to the holder by crediting the account of the holder or its nominee with DTC through its Deposit Withdrawal Agent Commission system, (ii) if less than the full number of shares of Series B Preferred Stock evidenced by the surrendered certificate or certificates are being converted, a new certificate or certificates for the number of shares evidenced by such surrendered certificate or certificates less the number of shares converted and (iii) payment of all amounts to which a holder is entitled pursuant to Section 7(f) hereof. All shares of Common Stock issuable upon conversion of the Series B Preferred Stock will be made without charge to the holders of Series B Preferred Stock and upon issuance will be fully paid and non-assessable, free and clear of all taxes, liens, charges and encumbrances with respect to the issuance thereof. Such conversion shall be deemed to have been made at the close of business on the date of receipt of such notice and of such surrender of the certificate or certificates representing the shares of Series B Preferred Stock to be converted so that the rights of the holder thereof as to the shares being converted shall cease except for the right to receive shares of Common Stock and any payment of amounts due pursuant to Section 7(f), and the person entitled to receive the shares of Common Stock shall be treated for all

purposes as having become the record holder of such shares of Common Stock at such time. Any shares of Common Stock so delivered on or following the date on which such shares of Common Stock have been registered under the Securities Act pursuant to the Subscription Agreement and continue to be subject to resale under a then-effective registration statement, or otherwise may be sold by the holder pursuant to Rule 144 promulgated under the Securities Act, shall not bear any restrictive legend.

(iii) If a conversion of Series B Preferred Stock is to be made in connection with a Transaction or Change of Control or a similar transaction affecting the Corporation (other than a tender or exchange offer), the conversion of any shares of Series B Preferred Stock may, at the election of the holder thereof, be conditioned upon the consummation of such transaction, in which case such conversion shall not be deemed to be effective until such transaction has been consummated. In connection with any tender or exchange offer for shares of Common Stock, holders of Series B Preferred Stock shall have the right to tender (or submit for exchange) shares of Series B Preferred Stock in such a manner so as to preserve the status of such shares as Series B Preferred Stock until immediately prior to such time as shares of Common Stock are to be purchased (or exchanged) pursuant to such offer, at which time that portion of the shares of Series B Preferred Stock so tendered which is convertible into the number of shares of Common Stock to be purchased (or exchanged) pursuant to such offer shall be deemed converted into the appropriate number of shares of Common Stock. Any shares of Series B Preferred Stock not so converted shall be returned to the holder as Series B Preferred Stock.

(iv) The Corporation shall not close its books against the transfer of Series B Preferred Stock or of Common Stock issued or issuable upon conversion of Series B Preferred Stock in any manner which unreasonably interferes with the timely conversion of Series B Preferred Stock.

(f) Fractional Shares. In connection with the conversion of any shares of Series B Preferred Stock pursuant to this Section 7, no fractions of shares of Common Stock shall be issued, but in lieu thereof the Corporation shall pay a cash adjustment in respect of such fractional interest in an amount equal to such fractional interest multiplied by the Closing Price per share of Common Stock on the day on which such shares of Series B Preferred Stock are deemed to have been converted. If more than one share of Series B Preferred Stock shall be surrendered for conversion at one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the total number of shares of Series B Preferred Stock so surrendered.

(g) Reservation of Shares. The Corporation shall at all times reserve and keep available, free from liens, charges and security interests and not subject to any preemptive rights, solely for issuance upon conversion of the Series B Preferred Stock, the number of shares of Common Stock from time to time issuable upon conversion of all shares of the Series B Preferred Stock at the time outstanding and to ensure that the shares of Common Stock may be issued without violation of any applicable law or regulation or of any requirement of any securities exchange or inter-dealer quotation system on which the shares of Common Stock may be listed or traded.

(h) Certain Events. If an event not specifically provided for in this Section 7 occurs which would have an inequitable or dilutive effect on the relative percentage ownership interests of the holders of Series B Preferred Stock as those specifically provided for in this Section 7, then the Board of Directors shall make an appropriate adjustment in the Conversion Price so as to protect the rights of the holders of Series B Preferred Stock.

(i) Conversion Disputes. In the case of any dispute with respect to a conversion, the Corporation shall promptly issue such number of shares of Common Stock as are not disputed in accordance with Section 7(e)(ii) above. If such dispute involves the calculation of the Conversion Price, and such dispute is not promptly resolved by discussion between the relevant holder and the Corporation, the Corporation shall submit the disputed calculations to an independent outside accountant via facsimile within three business days of receipt of the written notice of conversion. The accountant, at the Corporation's sole expense, shall promptly audit the calculations and notify the Corporation and the holder of the results no later than three business days from the date it receives the disputed calculations. The accountant's calculation shall be deemed conclusive, absent manifest error. The Corporation shall then issue the appropriate number of shares of Common Stock in accordance with this Section 7.

(j) Conversion on the Option of the Corporation.

(i) Provided the Corporation has a sufficient number of shares of Common Stock duly authorized and reserved for issuance upon conversion of all of the outstanding shares of Series B Preferred Stock, upon delivery of written notice of conversion by the Corporation to the holders of Series B Preferred Stock within 15 days after the occurrence of any Conversion Trigger Date, which notice shall specify the applicable Conversion Trigger Date, all (and not less than all) of the then outstanding shares of Series B Preferred Stock shall be immediately and automatically converted into fully paid and non-assessable shares of Common Stock effective as of the date specified in such notice not more than 30 days from the specified Conversion Trigger Date. The number of shares of Common Stock to which a holder of a share of Series B Preferred Stock shall be entitled upon such conversion shall be determined by dividing (x) the sum of (i) the Stated Value plus (ii) an amount equal to the aggregate of all accrued but unpaid dividends (whether or not declared) on such share as of the close of business on the Business Day immediately preceding the specified Conversion Trigger Date by (y) the Conversion Price in effect at the close of business on the Business Day immediately preceding the specified Conversion Trigger Date.

(ii) Mechanics. Any conversion pursuant to this Section 7(j) shall occur automatically and without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent. Upon the occurrence of such automatic conversion of the Series B Preferred Stock, the holders of the Series B Preferred Stock shall, a reasonable time thereafter, surrender the certificates representing such shares (converted pursuant to this Section 7(j)) at the office of the Corporation or any transfer agent for the Series B Preferred Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on the Corporation's stock records, a certificate or certificates for the number of shares of Common Stock into which such shares of Series B Preferred Stock surrendered were convertible on the date as of which such automatic conversion occurred. All certificates evidencing shares of

Series B Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the date of such conversion, be deemed to have been retired and cancelled and the shares of Series B Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates.

SECTION 8. REACQUIRED SHARES.

Any shares of Series B Preferred Stock converted, purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof.

SECTION 9. NO PREEMPTIVE RIGHTS.

Holders of Series B Preferred Stock shall not have any preemptive right pursuant to this Article V(D) to subscribe to any additional issue of stock or to any security convertible into such stock. Nothing herein shall limit the power of the Corporation to grant any of the foregoing rights to persons by contract or otherwise or the power of any person, including, without limitation, the holders of Series B Preferred Stock, to exercise any of the foregoing rights granted to them by contract or otherwise.

SECTION 10. GENERAL PROVISIONS.

(a) Headings. The headings of the sections, paragraphs, subparagraphs, clauses and subclauses of this Article V(D) are for convenience of reference only and shall not define, limit or affect any of the provisions hereof.

(b) Waivers. In the event that the holders of at least 50.01% of the issued and outstanding shares of Series B Preferred Stock, voting as a single class shall consent to waive compliance by the Corporation with any provision of, or a breach by the Corporation of any provision of, this Article V(D), all holders of outstanding shares of Series B Preferred Stock shall be bound by such waiver.

SECTION 11. DEFINITIONS.

For the purposes of this Article V(D):

“Above Market Repurchase” shall mean any purchase (by tender or exchange offer, open market purchase, privately negotiated purchase or otherwise) of all or any portion of the Corporation’s Common Stock where such purchase is for aggregate consideration having a Fair Market Value as of the earlier of (i) the date of such purchase or (ii) the date immediately prior to the date of the public announcement of such purchase, that exceeds the product of (x) the aggregate number of shares being purchased, multiplied by (y) the Closing Price of the Common Stock on such date.

“Accrued Value” means, with respect to a share of Series B Preferred Stock, as at any date, the sum of (as adjusted for any split, subdivision, combination, consolidation,

recapitalization or similar event with respect to the Series B Preferred Stock) (i) the Stated Value plus (ii) an amount equal to the aggregate of all accrued but unpaid dividends (whether or not declared) on such share through and including such date which have been added to Accrued Value pursuant to Section 3(a)(ii).

“Additional Dividends” has the meaning set forth in Section 3(b) above.

“Additional Shares” has the meaning set forth in Section 7(b)(ii) above.

“Adjustment Price” has the meaning set forth in Section 7(b)(ii) above.

“Affiliate” shall have the meaning set forth in Rule 12b-2 promulgated by the Securities and Exchange Commission under the Exchange Act.

“Available Shares” shall have the meaning ascribed thereto in the Subscription Agreements.

“Business Day” means any day other than a Saturday, Sunday, or a day on which commercial banks in the City of New York are authorized or obligated by law or executive order to close.

“Change of Control” means (i) any sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation) of all or substantially all of the Corporation’s assets, on a consolidated basis, in one transaction or a series of related transactions, to any Person (including any group that is deemed to be a Person) other than the Initial Purchasers or their respective Affiliates; (ii) any Person (including any group that is deemed to be a Person) other than the Initial Purchasers or any of their respective Affiliates, is or becomes the “beneficial owner” (within the meaning of Rule 13d-3 promulgated under the Exchange Act) directly or indirectly, of more than 50% of the combined voting power of the Voting Securities of the Corporation (or the surviving entity or entities of a transaction or a series of related transactions if other than the Corporation); (iii) the Continuing Directors cease for any reason to constitute a majority of the members of the Board of Directors then in office; (iv) a merger or consolidation of the Corporation with any other Person, other than a merger or consolidation resulting in the Voting Securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the Voting Securities of the Corporation or such surviving entity outstanding immediately after such merger or consolidation; or (v) the Corporation adopts, voluntarily or involuntarily, a plan of liquidation or dissolution.

“Closing Price” per share of Common Stock on any date shall be the closing sale price on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Common Stock or such other securities are listed or admitted to trading or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the last quoted sale price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated

Quotation System or such other system then in use, or, if on any such date the Common Stock or such other securities are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker, selected by the Board of Directors and reasonably acceptable to the holders of a majority of the outstanding shares of Series B Preferred Stock, making a market in the Common Stock or such other securities of the Corporation.

“Common Stock” means the common stock, no par value per share, of the Corporation.

“Continuing Directors” means the individuals who are members of the Corporation’s Board of Directors as of the Issuance Date; provided, however, that if the election, or nomination for election by the Corporation’s shareholders, of any new director was approved by a vote of at least a majority of the Continuing Directors, such new director shall be considered a “Continuing Director”.

“Conversion Price” means the Initial Conversion Price, subject to adjustment as provided in Section 7(b).

“Conversion Trigger Date” shall mean any date after August 23, 2005 as to which the Closing Price per share of Common Stock for at least 20 consecutive Trading Days immediately preceding such date, including the last Trading Day of such period, is greater than or equal to \$5.00 per share (as adjusted for any split, subdivision, combination, consolidation, recapitalization or similar event with respect to the Common Stock).

“Convertible Securities” shall mean any options or warrants to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock, or options or warrants to purchase or rights to subscribe for such convertible or exchangeable securities.

“Dividend Payment Date” means each of March 31, June 30, September 30 and December 31, except that if such date is not a Business Day then the Dividend Payment Date shall be the next day that is a Business Day.

“Dividend Period” means the Initial Dividend Period and, thereafter, each quarterly period from and including a Dividend Payment Date to the next following Dividend Payment Date (but without including such later Dividend Payment Date).

“Dividend Rate” has the meaning set forth in Section 3(a)(i).

“Exchange Act” means the Securities Exchange Act of 1934, as amended and the rules and regulations promulgated thereunder.

“Excluded Issuances” means the issuance or reissuance of any shares of Common Stock or Convertible Securities (whether treasury shares or newly issued shares) pursuant to or in connection with (1) a dividend or distribution on, or subdivision, combination, consolidation or reclassification of, the outstanding shares of Common Stock requiring an adjustment in the Conversion Price pursuant to Section 7(b)(i), (2) any Convertible Security outstanding as of the Issuance Date (except as otherwise provided in Section 7(b)(iv)(5)(D)), including, without limitation, warrants originally issued to holders of Series B Preferred Stock pursuant to the

Subscription Agreements, (3) the conversion of shares of Series B Preferred Stock, (4) the grant or exercise of any stock or stock options to employees, directors or consultants of the Corporation that may be granted to or exercised by any employee, director or consultant under any stock option or similar benefit plan of the Corporation now existing or to be implemented in the future, (5) any transaction involving the Corporation's issuance of securities in connection with an acquisition (the primary purpose of which is not to raise equity capital), (6) any transaction involving the Corporation's issuance of securities in connection with any strategic partnership or joint venture (the primary purpose of which is not to raise equity capital), (7) any issuance of securities by the Corporation as consideration for the acquisition of a license by the Corporation, (8) the issuance of securities pursuant to any financing from a bank or similar financial or lending institution approved by the Board of Directors, or (9) the issuance of any Replacement Common Stock; provided, however, that issuances of securities described in the forgoing sub-clauses (4), (6), (7) and (8) subsequent to the Issuance Date which exceed, in the aggregate, 10% of the outstanding Common Stock of the Corporation outstanding as of the Issuance Date (as adjusted for any split, subdivision, combination, consolidation, recapitalization or similar event with respect to the Common Stock), as determined on a fully-diluted basis, shall not be deemed to be Excluded Issuances.

"Fair Market Value" with respect to any securities, assets or property shall mean the fair value thereof as determined by an independent investment banking or appraisal firm experienced in the valuation of such securities or property selected in good faith by the Board of Directors and acceptable to the holders of a majority of the outstanding shares of Series B Preferred Stock; provided, that, the value of any securities that trade on a national securities exchange or inter-dealer quotation system shall be the Closing Price thereof as of the date such value is determined.

"Initial Conversion Price" means \$2.70.

"Initial Dividend Period" means the dividend period commencing on the Issuance Date and ending on (and including) the date immediately prior to the first Dividend Payment Date to occur thereafter.

"Initial Purchasers" means the initial Purchasers of the Series B Preferred Stock pursuant to the Subscription Agreements.

"Issuance Date" means with respect to any share of Series B Preferred Stock, the date on which the Corporation initially issues such share of Series B Preferred Stock, regardless of the number of times transfer of such share is made on the stock records of the Corporation and regardless of the number of certificates which may be issued to evidence such share.

"Junior Securities" shall mean the Corporation's Common Stock and all classes and series of capital stock of the Corporation now or hereafter authorized, issued or outstanding which by their terms expressly provide that they are junior to the Series B Preferred Stock, or which do not specify their rank, with respect to payment of dividends and the distribution of assets upon liquidation, winding up or dissolution. This definition of Junior Securities shall include, without limitation, any Convertible Securities exercisable or exchangeable for or convertible into any Junior Securities.

“Junior Securities Distribution” means the declaration or payment on account of, or setting apart for payment money for a sinking or other similar fund for, the purchase, redemption or other retirement of, any Junior Securities or any Convertible Securities exercisable or exchangeable for or convertible into any shares of Junior Securities, or any distribution in respect thereof (except for (i) dividends on Junior Securities which are payable solely in additional shares of Junior Securities, or by the increase in the liquidation value of Junior Securities, in each case, as required by the terms of such Junior Securities, or (ii) cashless exercises of options), either directly or indirectly, and whether in cash, obligations, Common Stock, Convertible Securities or other property, or the purchase or redemption by any corporation or other entity directly or indirectly controlled by the Corporation of any of the Junior Securities or any Convertible Securities exercisable or exchangeable for or convertible into any Junior Securities.

“Liquidation” has the meaning set forth in Section 5(a) above.

“Liquidation Preference” means the greater of (x) the sum of (i) the Stated Value plus (ii) an amount equal to the aggregate of all accrued but unpaid dividends (whether or not declared) on such share and (y) the amount that would be payable to such holder in the Liquidation in respect of Common Stock issuable upon conversion of such share of Series B Preferred Stock if all outstanding shares of Series B Preferred Stock were converted into Common Stock immediately prior to the Liquidation in accordance with Section 7 hereof.

“Parity Securities” means the Series A Preferred Stock and each class or series of capital stock issued by the Corporation after the date hereof the terms of which specifically provide that such class or series will rank on a parity with the Series B Preferred Stock with respect to payment of dividends and the distribution of assets upon liquidation, winding up or dissolution. This definition of Parity Securities shall include, without limitation, any Convertible Securities exercisable or exchangeable for or convertible into any Parity Securities.

“Parity Securities Distribution” means the declaration or payment on account of, or setting apart for payment money for a sinking or other similar fund for, the purchase, redemption or other retirement of (other than by conversion into or exchange for Junior Securities), any Parity Securities or any Convertible Securities exercisable or exchangeable for or convertible into any shares of Parity Securities, or any distribution in respect thereof (except for (i) dividends on Parity Securities which are payable solely in additional shares of Parity Securities, or by the increase in the liquidation value of Parity Securities, in each case, as required by the terms of such Parity Securities or (ii) cashless exercises of options), either directly or indirectly, and whether in cash, obligations, Common Stock, Convertible Securities or other property, or the purchase or redemption by any corporation or other entity directly or indirectly controlled by the Corporation of any of the Parity Securities or any Convertible Securities exercisable or exchangeable for or convertible into any Parity Securities.

“Person” means an individual, corporation, limited liability company or partnership, unincorporated organization, trust or joint venture, or a governmental agency or political subdivision thereof, or other entity of any kind.

“Senior Securities” means each class or series of capital stock issued by the Corporation after the date hereof the terms of which specifically provide that such class or series will rank

senior to the Series B Preferred Stock with respect to payment of dividends and the distribution of assets upon liquidation, winding up or dissolution. This definition of Senior Securities shall include, without limitation, any Convertible Securities exercisable or exchangeable for or convertible into any Senior Securities.

“Series A Preferred Stock” means the Corporation’s Series A 6.0% Participating Convertible Preferred Stock.

“Series B Preferred Stock” has the meaning set forth in Section 1 above.

“Stated Value” means, with respect to a share of Series B Preferred Stock, \$100 (as adjusted for any split, subdivision, combination, consolidation, recapitalization or similar event with respect to the Series B Preferred Stock).

“Subscription Agreements” means the Subscription Agreements for the purchase of Series B Preferred Stock executed by each of the Initial Purchasers on or before August 23, 2004, by and among the Company and the respective Initial Purchasers described therein.

“Subsidiary” of any Person means any corporation or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by such Person.

“Surviving Person” means the continuing or surviving Person of a merger, consolidation or other corporate combination, the Person receiving a transfer of all or a substantial part of the properties and assets of the Corporation, or the Person consolidating with or merging into the Corporation in a merger, consolidation or other corporate combination in which the Corporation is the continuing or surviving Person, but in connection with which the Series B Preferred Stock or Common Stock of the Corporation is exchanged, converted or reinstated into the securities of any other Person or cash or any other property; provided, however, if such Surviving Person is a direct or indirect Subsidiary of a Person, the parent entity shall be deemed to be a Surviving Person.

“Trading Day” means a day on which the principal national securities exchange on which the Common Stock is quoted, listed or admitted to trading is open for the transaction of business or, if the Common Stock is not quoted, listed or admitted to trading on any national securities exchange (or the Nasdaq Stock Market), any Business Day.

“Transaction” has the meaning set forth in Section 7(c) above.

“Voting Securities” mean the Common Stock, the Series A Preferred Stock, the Series B Preferred Stock and any other securities of the Corporation having the voting power under ordinary circumstances with respect to the election of directors of the Corporation.

These Articles of Amendment are executed as of the 20th day of August, 2004.

AKORN, INC.

By: /s/ Arthur S. Przybyl
Arthur S. Przybyl, President
and CEO

ACKNOWLEDGMENT

STATE OF ILLINOIS

COUNTY OF MACON

BEFORE ME, the undersigned authority, personally came and appeared Arthur S. Przybyl, to me known to be the person who signed the foregoing instrument as President and CEO of Akorn, Inc. and who acknowledged and declared, in the presence of the two witnesses whose names are subscribed below, that he signed such instrument as his free act and deed in the capacity and for the purposes mentioned therein.

IN WITNESS WHEREOF, each of the undersigned has herewith affixed his or her hand on this 20th day of August, 2004, in the aforesaid county and state.

WITNESSES:

John R. Sabat

Abu Alam

/s/ Arthur S. Przybyl
Arthur S. Przybyl

/s/ Sheila M. Doolin
Notary Public

SUBSCRIPTION AGREEMENT

SUBSCRIPTION AGREEMENT (this "Agreement") made as of the date set forth on the signature page hereof between Akom, Inc., a Louisiana corporation (the "Company"), and the undersigned (the "Subscriber").

WITNESSETH:

WHEREAS, the Company is offering in a private placement to accredited investors (the "Offering") of up to an aggregate of (i) 170,000 shares of its Series B 6% Participating Convertible Preferred Stock (the "Series B Preferred Stock") at a price equal to \$100.00 per share (the "Offering Price"), and (ii) warrants to purchase shares of common stock of the Company ("Common Stock") equal to thirty percent (30%) of the total number of shares of Common Stock into which the Series B Preferred Stock is convertible, at an exercise price per share equal to \$3.50 (the "Warrants"). The Warrants are issued for a five (5) year period. The shares of Series B Preferred Stock and Warrants offered hereby are sometimes referred to as the "Securities" and all Securities, all shares of Common Stock issued or issuable upon conversion or exercise of such Securities, as the case may be, and all shares of Replacement Common Stock (defined below) are collectively referred to herein as the "Purchased Securities"; and

WHEREAS, the Subscriber desires to purchase that number of Securities set forth on the signature page hereof on the terms and conditions hereinafter set forth; and

WHEREAS, the Company has engaged Leerink Swann & Company (the "Placement Agent") as placement agent for the Offering on a "best-efforts" basis.

NOW, THEREFORE, in consideration of the premises and the mutual representations and covenants hereinafter set forth, the parties hereto agree as follows:

I. SUBSCRIPTION FOR SECURITIES AND REPRESENTATIONS BY SUBSCRIBER

1.1 Subject to the terms and conditions hereinafter set forth, the Subscriber hereby irrevocably subscribes for and agrees to purchase from the Company such Securities as is set forth, and at the purchase price set forth, upon the signature page hereof and the Company agrees to sell such Securities to the Subscriber for said purchase price. The purchase price is payable by wire transfer of immediately available funds contemporaneously with the execution and delivery of this Agreement by the Subscriber. All wires should be sent to:

JP Morgan Chase
55 Water Street
New York, NY 10041
ABA# 021 000 021
Account#: 323 059945
Attn: Henry Reinhold

Certificates for the shares of Series B Preferred Stock and the Warrants will be delivered by the Company to the Subscriber promptly following the Closing (as herein defined).

1.2 The Subscriber recognizes that the purchase of Securities involves a high degree of risk in that (i) the Company will require funds in addition to the proceeds of the Offering; (ii) an investment in the Company is highly speculative and only investors who can afford the loss of their entire investment should consider investing in the Company; (iii) the Subscriber may not be able to liquidate its investment; (iv) transferability of the Securities is extremely limited; and (v) in the event of a disposition, the Subscriber could sustain the loss of its entire investment.

1.3 The Subscriber represents that the Subscriber is an “accredited investor” as such term is defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended (the “Act”), as indicated by the responses to the questions contained in Section VII hereof, and that the Subscriber is able to bear the economic risk and illiquidity of an investment in the Securities.

1.4 The Subscriber hereby acknowledges and represents that (i) the Subscriber has prior investment experience, including investment in non-listed and unregistered securities, or that the Subscriber has employed the services of an investment advisor, attorney and/or accountant to read all of the documents furnished or made available by the Company both to the Subscriber and to all other prospective investors to evaluate the merits and risks of such an investment on the Subscriber’s behalf; (ii) the Subscriber recognizes the highly speculative nature of an investment in the Securities; and (iii) the Subscriber is able to bear the economic risk and illiquidity which the Subscriber assumes by investing in the Securities.

1.5 The Subscriber (i) hereby represents that the Subscriber has been furnished by the Company during the course of this transaction with and has carefully read the Company’s SEC Filings (as hereafter defined), including without limitation the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2003, the additional risk factors specific to the Securities, the Common Stock, and the Offering contained in Schedule 1.5 hereto (together with the SEC Filings, the “Offering Documents”), and all other information regarding the Company which the Subscriber has requested or desired to know; (ii) has been afforded the opportunity to ask questions of and receive answers from duly authorized officers or other representatives of the Company concerning the terms and conditions of the Offering; and (iii) has received any additional information which the Subscriber has requested.

1.6 (a) To the extent necessary, the Subscriber has retained, at its own expense, and relied upon the advice of appropriate professionals regarding the investment, tax and legal merits and consequences of this Agreement and its purchase of the Securities hereunder.

(b) The Subscriber represents that (i) the Subscriber was contacted regarding the sale of the Securities by the Placement Agent (or an authorized agent or representative thereof) with whom the Subscriber had a prior substantial pre-existing relationship and (ii) no Securities were offered or sold to it by means of any form of general solicitation or general advertising, and in connection therewith the Subscriber did not (A) receive or review any advertisement, article, notice or other communication published in a newspaper or magazine or similar media or broadcast over television or radio, whether closed circuit or generally available;

or (B) attend any seminar, meeting or industry investor conference whose attendees were invited by any general solicitation or general advertising.

1.7 The Subscriber hereby acknowledges that the Offering has not been reviewed by the United States Securities and Exchange Commission (the "SEC") because of the Company's representations that this Offering is intended to be exempt from the registration requirements of Section 5 of the Act pursuant to Sections 3(b), 4(2) and/or 4(6) thereof and Regulation D promulgated under the Act. The Subscriber agrees that the Subscriber will not, directly or indirectly, offer, sell, pledge, transfer or otherwise dispose of (or solicit any offers to buy, purchase or otherwise acquire or take a pledge of) any of the Securities, except in compliance with the Act and the rules and regulations promulgated thereunder.

1.8 The Subscriber understands that none of the Securities have been registered under the Act by reason of a claimed exemption under the provisions of the Act which depends, in part, upon the Subscriber's investment intention. In this connection, the Subscriber hereby represents that the Subscriber is purchasing the Securities for the Subscriber's own account for investment and not with a view toward the resale or distribution thereof to others. The Subscriber, if an entity, was not formed for the purpose of purchasing the Securities. The Subscriber understands that Rule 144 promulgated under the Act requires, among other conditions, a one-year holding period prior to the resale (in limited amounts) of securities acquired in a non-public offering without having to satisfy the registration requirements under the Act.

1.9 The Subscriber understands and hereby acknowledges that the Company is under no obligation to register the Securities under the Act or any state securities or "blue sky" laws other than as set forth in Section V. The Subscriber consents that the Company may, if it desires, permit the transfer of the Securities out of the Subscriber's name only when the Subscriber's request for transfer is accompanied by an opinion of counsel reasonably satisfactory to the Company that neither the sale nor the proposed transfer results in a violation of the Act or any applicable state "blue sky" laws (collectively, "Securities Laws").

1.10 The Subscriber consents to the placement of a legend on any certificate or other document evidencing the Securities indicating that such Securities have not been registered under the Act or any state securities or "blue sky" laws and setting forth or referring to the restrictions on transferability and sale thereof contained in this Agreement. The Subscriber is aware that the Company will make a notation in its appropriate records and issue "stop transfer" instructions to its transfer agent with respect to the restrictions on the transferability of such Securities.

1.11 The Subscriber understands that the Company will review this Agreement and, if such Subscriber is an individual, hereby gives authority to the Company to call Subscriber's bank or place of employment (in a call in which the Placement Agent participates) or otherwise review the financial standing of the Subscriber; and it is further agreed that upon their mutual agreement the Placement Agent and the Company reserve the unrestricted right, without further documentation or agreement on the part of the Subscriber, to reject or limit any subscription, to accept subscriptions for Securities and to close the Offering to the Subscriber at any time.

1.12 The Subscriber hereby represents that the address of the Subscriber furnished by the Subscriber on the signature page hereof is the Subscriber's principal residence if the Subscriber is an individual or its principal business address if it is a corporation or other entity.

1.13 The Subscriber represents that the Subscriber has full power and authority (corporate, statutory and otherwise) to execute and deliver this Agreement and to purchase the Securities subscribed for hereby. This Agreement constitutes the legal, valid and binding obligation of the Subscriber, enforceable against the Subscriber in accordance with its terms.

1.14 If the Subscriber is a corporation, partnership, limited liability company, trust, employee benefit plan, individual retirement account, Keogh Plan, or other entity, then (a) it is authorized and qualified to become an investor in the Company and the person signing this Agreement on behalf of such entity has been duly authorized by such entity to do so, and (b) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

1.15 The Subscriber represents and warrants that the Subscriber is not (a) a broker or dealer admitted to membership in the National Association of Securities Dealers, Inc. ("NASD"), (b) a controlling stockholder of an NASD member, or (c) a person associated with a member of the NASD.

1.16 The Subscriber represents and warrants that it has not engaged, consented to nor authorized any broker, finder or intermediary to act on its behalf, directly or indirectly, as a broker, finder or intermediary in connection with the transactions contemplated by this Agreement. The Subscriber shall indemnify and hold harmless the Company from and against all fees, commissions or other payments owing to any such person or firm acting on behalf of such Subscriber hereunder.

1.17 The Subscriber acknowledges that (a) the Company has engaged, consented to and authorized the Placement Agent in connection with the transactions contemplated by this Agreement, (b) the Company shall pay the Placement Agent a commission and reimburse the Placement Agent's expenses and the Company shall indemnify and hold harmless the Subscriber from and against all fees, commissions or other payments owing by the Company to the Placement Agent or any other person or firm acting on behalf of the Company hereunder and (c) registered representatives of the Placement Agent and/or its designees (including, without limitation, registered representatives of the Placement Agent and/or its designees who participate in the Offering and sale of the securities sold in the Offering) will be paid a portion of the commissions paid to the Placement Agent.

1.18 The Subscriber, whose name appears on the signature line below, shall be the beneficial owner of the Securities for which such Subscriber subscribes.

1.19 The Subscriber agrees that from the time the Subscriber was first contacted by the Placement Agent regarding the Offering, until a point in time equal to the earlier of (i) the date that the Registration Statement (as defined in Section 5.2(a)) is declared effective by the SEC or (ii) four months from the date hereof, the Subscriber has not and shall not, directly or indirectly, through related parties, affiliates or otherwise, sell or purchase or otherwise deal in or with any

equity security of the Company while in possession of any material non-public information of the Company or in violation of any applicable securities law or regulation.

1.20 The Subscriber understands, acknowledges and agrees with the Company as follows:

(a) The Company may terminate the Offering or reject any subscription at any time in its sole discretion. The execution of this Agreement by the Subscriber or solicitation of the investment contemplated hereby shall create no obligation on the part of the Company or the Placement Agent to accept any subscription or complete the Offering.

(b) The Subscriber hereby acknowledges and agrees that the subscription hereunder is irrevocable by the Subscriber, and that, except as required by law, the Subscriber is not entitled to cancel, terminate or revoke this Agreement or any agreements of the Subscriber hereunder and that if the Subscriber is an individual this Agreement shall survive the death or disability of the Subscriber and shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

(c) No federal or state agency or authority has made any finding or determination as to the accuracy or adequacy of the Offering Documents or as to the fairness of the terms of the Offering nor any recommendation or endorsement of the Securities. Any representation to the contrary is a criminal offense. In making an investment decision, the Subscriber must rely on its own examination of the Company and the terms of the Offering, including the merits and risks involved.

II. REPRESENTATIONS BY THE COMPANY

The Company hereby represents and warrants to the Subscriber that:

2.1 Organization and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Louisiana and has the power and authority to conduct its business as presently conducted. The Company is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the nature of the business presently conducted by it or the properties owned, leased or operated by it, makes such qualification or licensing necessary and where the failure to be so qualified or licensed would have a material adverse effect upon the business, prospects or financial condition of the Company.

2.2 Capitalization and Voting Rights. Upon Closing, the authorized capital stock of the Company will be One Hundred Fifty Million (150,000,000) shares of Common Stock and Five Million (5,000,000) shares of preferred stock, of which 20,612,684 shares of Common Stock, 257,172 shares Series A 6% Participating Convertible Preferred Stock (the "Series A Preferred Stock"), and no shares of Series B Preferred Stock are issued and outstanding as of July 31, 2004. All issued and outstanding shares of capital stock of the Company are validly issued, fully paid and nonassessable. Except as set forth in this Agreement or in the SEC Filings (as hereafter defined), there are no outstanding options, warrants, agreements, commitments, convertible securities, preemptive rights or other rights to subscribe for or to purchase any shares of capital stock of the Company nor are there any agreements, promises or commitments to issue

any of the foregoing. Except as set forth in the SEC Filings, in this Agreement and as otherwise required by law, there are no restrictions upon the voting or transfer of the Purchased Securities pursuant to the Company's Articles of Incorporation, as amended (the "Articles of Incorporation"), By-laws or other governing documents or any agreement or other instruments to which the Company is a party or by which the Company is bound.

2.3 Authorization; Enforceability. The Company has the corporate right and corporate authority to enter into this Agreement and to consummate the transactions contemplated hereby. All corporate action on the part of the Company, its directors and stockholders necessary for the authorization, execution, delivery and performance of this Agreement by the Company, the authorization, sale, issuance and delivery of the Purchased Securities and the performance of the Company's obligations hereunder has been taken. This Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies, and to limitations of public policy. The Purchased Securities have been duly and validly authorized and, upon the issuance and delivery thereof and, in the case of the Securities, payment therefor as contemplated by this Agreement, will be free and clear of liens, duly and validly authorized and issued, fully paid and nonassessable and will not impose personal liability on the holder thereof. The issuance and sale of the Purchased Securities contemplated hereby will not give rise to any preemptive rights or rights of first refusal on behalf of any person.

2.4 No Conflict; Governmental Consents.

(a) The execution, delivery and performance by the Company of this Agreement, the consummation of the transactions contemplated hereby and the offer and sale of the Purchased Securities will not result in the violation of any law, statute, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental authority to or by which the Company is bound, or of any provision of the Articles of Incorporation or By-laws of the Company, and will not conflict with, or result in a breach or violation of, any of the terms or provisions of, or constitute (with due notice or lapse of time or both) a default under, or give to others any rights of termination, amendment (including without limitation, the triggering of any anti-dilution provisions), acceleration or cancellation of any lease, loan agreement, mortgage, security agreement, trust indenture or other agreement or instrument to which the Company is a party or by which it is bound or to which any of its properties or assets is subject, nor result in the creation or imposition of any lien upon any of the properties or assets of the Company.

(b) No consent, waiver, approval, authorization or other order of any governmental authority or other third-party is required to be obtained by the Company in connection with the authorization, execution, delivery and performance of this Agreement or with the authorization, issuance and sale of the Purchased Securities, except for such consents, waivers, approvals, authorizations or orders as may be required to be obtained or made, and which shall have been obtained or made at or prior to the Closing Date.

2.5 Licenses. The Company has all licenses, permits and other governmental authorizations currently required for the conduct of its business or ownership of properties and is

in all material respects complying therewith, except for any licenses, permits or other governmental authorizations which would not materially adversely affect the business, property, financial condition, results of operations or prospects of the Company.

2.6 Litigation. The Company knows of no pending or threatened legal or governmental proceedings against the Company which could materially adversely affect the business, property, financial condition, prospects, results of operations or prospects of the Company.

2.7 Accuracy of Reports. All reports required to be filed by the Company under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), since December 31, 2003, have been duly and timely filed with the SEC. All such reports complied at the time of their respective filing dates in all material respects with the requirements of the Exchange Act or the Act, as applicable, and all rules and regulations thereunder of their respective forms. None of such reports contained (as of their respective dates) any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

2.8 Investment Company. The Company is not an "investment company" within the meaning of such term under the Investment Company Act of 1940, as amended, and the rules and regulations of the SEC thereunder.

2.9 Intellectual Property. The Company owns or possesses sufficient rights to use all patents, patent rights, trademarks, copyrights, licenses, inventions, trade secrets, trade names and know-how that are necessary for the conduct of its business as now conducted except where the failure to own or possess would not have a material adverse effect on the business, assets, financial condition, prospects or results of operation of the Company (the "Company Intellectual Property"). Except as set forth in the SEC Filings, (i) the Company has not received any written notice of, and has no knowledge of, any infringement by the Company of intellectual property rights of any third party that, individually or in the aggregate, would have a material adverse effect on the business, assets, financial condition, prospects or results of operation of the Company and (ii) the Company has not received any written notice of any infringement by a third party of any Company Intellectual Property that, individually or in the aggregate, would have a material adverse effect on the business, assets, financial condition, prospects or results of operation of the Company.

2.10 Insurance. The Company and each of its subsidiaries has in force fire, casualty, product liability and other insurance policies, with extended coverage, sufficient in amount to allow it to replace any of its material properties or assets which might be damaged or destroyed or sufficient to cover liabilities to which the Company may reasonably become subject, and such types and amounts of other insurance with respect to its business and properties, on both a per occurrence and an aggregate basis, as are customarily carried by persons engaged in the same or similar business as the Company. No default or event has occurred that could give rise to a default under any such policy.

2.11 Anti-Takeover Provisions. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under its Certificate of Incorporation or the laws of the state of its incorporation which is or could become applicable to any Subscriber as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Securities and the shares of Common Stock into which such Securities are convertible or exercisable, as the case may be, and any and all Subscriber's ownership of the Securities and the shares of Common Stock into which such Securities are convertible or exercisable, as the case may be, provided that neither the anti-dilution nor change of control approval rights of holders of outstanding securities of the Company shall be deemed to be included in this representation to the extent such rights may become available to them following the Closing Date as a result of changes in circumstances occurring after the Closing Date.

2.12 No Material Adverse Change. Since the filing of the Company's most recent SEC Report on Form 10-Q, (i) there has not been any material adverse change (financial or otherwise) in the assets, properties, financial condition, prospects, operating results or business of the Company, and (ii) there has been no event or condition of any character that might have a material adverse effect (financial or otherwise) on the assets, properties, financial condition, prospects, operating results or business of the Company.

2.13 Financial Statements. The financial statements included in the Company's most recent Annual Report on Form 10-K for the fiscal year ended December 31, 2003 and all other reports filed by the Company with the SEC pursuant to the Exchange Act since the filing of such Annual Report on Form 10-K and prior to the date hereof (collectively, the "SEC Filings") present fairly and accurately in all material respects the financial position of the Company as of the dates shown and its results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis (except as may be indicated thereon or in the notes thereto and subject, in the case of unaudited financial statements, to normal adjustments). Except as set forth in the financial statements of the Company included in the SEC Filings filed prior to the date hereof, to the Company's knowledge, the Company has no liabilities, contingent or otherwise, except those which individually or in the aggregate are not material to the financial condition or operating results of the Company.

2.14 Compliance with Laws. Neither the Company nor, to the Company's knowledge, any Person (as hereafter defined) acting on the Company's behalf and in accordance with the Company's instructions, has conducted any general solicitation or general advertising (as those terms are used in Regulation D of the Act) in connection with the offer or sale of the Securities. Neither the Company nor any of its Affiliates (as hereafter defined), nor, to the Company's knowledge, any Person acting on the Company's or on the behalf of its Affiliates and in accordance with the Company's instructions, has, directly or indirectly, made any offers or sales of any security of the Company or solicited any offers to buy any security of the Company, under circumstances that would adversely affect reliance by the Company on Section 4(2) of the Act for the exemption from registration for the transactions contemplated hereby or would require registration of the Securities under the Act. There are no proceedings pending or to the

Company's knowledge threatened against the Company relating to the continued trading of the Company's Common Stock on the OTC Bulletin Board®.

2.15 No Violation. The Company is not in violation of its Articles of Incorporation, Bylaws or other organizational documents. The Company is not in default (and no event has occurred that with notice or lapse of time or both would put the Company in default) under, nor has there occurred any event giving others (with notice or lapse of time or both) any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company is a party, except for actual or possible violations, defaults or rights that would not, individually or in the aggregate, have a material adverse effect on the business, property, financial condition, results of operations or prospects of the Company. Except as set forth in the Offering Documents, the business of the Company is not being conducted in violation of any law, ordinance or regulation of any governmental entity, except for possible violations the sanctions for which either individually or in the aggregate have not had and would not have a material adverse effect on the business, property, financial condition, results of operations or prospects of the Company.

2.16 Tax Matters. The Company has timely filed all material federal, state, local and foreign income and franchise and other tax returns required to be filed by any jurisdiction to which it is subject and has paid all taxes due in accordance therewith, and no tax deficiency has been determined adversely to the Company which has had (nor does the Company have any knowledge of any tax deficiency which, if determined adversely to the Company would reasonably be expected to have) a material adverse effect on the business, assets, financial condition or results of operation of the Company.

2.17 Disclosure. None of the representations and warranties of the Company appearing in this Agreement, when considered together as a whole, contains, or on the Closing Date will contain, any untrue statement of a material fact or omits, or on the Closing Date will omit, to state any material fact required to be stated herein or therein in order for the statements herein or therein, in light of the circumstances under which they were made, not to be misleading.

III. TERMS OF SUBSCRIPTION

3.1 The Offering is for up to 170,000 shares of Series B Preferred Stock and Warrants equal to thirty percent (30%) of the total number of shares of Common Stock into which the Series B Preferred Stock is convertible. The Securities are offered on a "best efforts" basis.

3.2 Upon the mutual consent of the Company and the Placement Agent, this Offering may close (the "Closing") prior to the sale of all 170,000 shares of Series B Preferred Stock and there is no assurance that all 170,000 shares of Series B Preferred Stock will be sold. The Closing shall occur at the discretion of the Company and the Placement Agent (the "Closing Date"). The purchase price is payable by wire transfer of immediately available funds as provided in Section 1.1.

3.3 The Subscriber hereby authorizes and directs the Company to deliver the Securities to be issued to the Subscriber pursuant to this Agreement directly to the Subscriber's

account maintained by the Placement Agent or, if no such account exists, to the residential or business address indicated on the signature page hereto.

3.4 The Subscriber hereby authorizes and directs the Company to return any funds related to unaccepted subscriptions to the same account from which the funds were drawn, including any customer account maintained with the Placement Agent.

IV. CONDITIONS TO OBLIGATIONS OF THE SUBSCRIBERS AND THE COMPANY

4.1 The Subscribers' obligation to purchase the Securities at the Closing is subject to the fulfillment on or prior to the Closing Date of the following conditions, which conditions may be waived at the option of each Subscriber to the extent permitted by law:

(a) Representations and Warranties. The representations and warranties made by the Company in Section II hereof shall be true and correct in all material respects when made, and shall be true and correct in all material respects on the Closing Date with the same force and effect as if they had been made on and as of said date.

(b) Covenants. All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to such purchase shall have been performed or complied with in all material respects.

(c) No Legal Order Pending. There shall not then be in effect any legal or other order enjoining or restraining the transactions contemplated by this Agreement.

(d) No Law Prohibiting or Restricting Such Sale. There shall not be in effect any law, rule or regulation prohibiting or restricting such sale or requiring any consent or approval of any person to issue the Securities which consent or approval shall not have been obtained (except as may otherwise be provided in this Agreement).

(e) Legal Opinion. Upon the Closing, counsel to the Company shall have delivered to the Placement Agent for the benefit of the Subscribers a legal opinion with respect to such legal matters relating to this Agreement and the Offering as the Placement Agent may reasonably require.

(f) Officer's Certificate. The Company shall have delivered to the Placement Agent on behalf of the Subscribers a certificate, dated the Closing Date, duly executed on behalf of the Company by its Chief Executive Officer to the effect set forth in clauses (a) and (b) above.

(g) CFO's Certificate. The Company shall have delivered to the Placement Agent on behalf of the Subscribers a certificate, dated the Closing Date, duly executed by its Chief Financial Officer or other appropriate officer, certifying that the attached copies of the Company's Articles of Incorporation, by-laws and the resolutions of the Board of Directors, or a committee to which it has delegated its authority, approving this Agreement and the transactions contemplated hereby, are all true, complete and correct and remain unamended and in full force and effect.

(h) Amount Invested. The Company shall have received on or before the Closing not less \$10,000,000 in the aggregate from other Subscribers in connection with the Offering.

4.2 The Company's obligation to sell the Securities at the Closing is subject to the fulfillment on or prior to the Closing Date of the following conditions, which conditions may be waived at the option of the Company to the extent permitted by law:

(a) Acknowledgements, Representations and Warranties. The acknowledgements, representations and warranties made by the Subscriber in Section I hereof shall be true and correct in all material respects when made, and shall be true and correct in all material respects on the Closing Date with the same force and effect as if they had been made on and as of said date; provided, however, that any acknowledgement, representation or warranty made by the Subscriber that is not true and correct and as a result the Subscriber is not an "accredited investor" under Rule 501 under Regulation D of the Act or the Company is not able to rely upon a private placement exemption under Rule 506 under Regulation D of the Act for the issuance of the Securities will automatically be deemed to be material. If any such representations, warranties or acknowledgements shall not be true and accurate in any respect prior to the Closing, the undersigned shall give immediate written notice of such fact to the Company, to the Placement Agent, and to his representatives, if any, specifying which representations, warranties or acknowledgements are not true and accurate and the reason therefor.

(b) Covenants. All covenants, agreements and conditions contained in this Agreement to be performed by the Subscriber on or prior to such purchase shall have been performed or complied with in all material respects.

(c) No Legal Order Pending. There shall not then be in effect any legal or other order enjoining or restraining the transactions contemplated by this Agreement.

(d) No Law Prohibiting or Restricting Such Sale. There shall not be in effect any law, rule or regulation prohibiting or restricting such sale or requiring any consent or approval of any person to issue the Securities which consent or approval shall not have been obtained (except as may otherwise be provided in this Agreement).

(e) Amount Invested. The Company shall have received on or before the Closing not less \$10,000,000 in the aggregate from other Subscribers in connection with the Offering.

V. REGISTRATION RIGHTS.

5.1 As used in this Agreement, the following terms shall have the following meanings:

(a) "Affiliate" shall mean, with respect to any Person (as defined below), any other Person controlling, controlled by, or under direct or indirect common control with, such Person (for the purposes of this definition "control," when used with respect to any specified Person, shall mean the power to direct the management and policies of such person, directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" shall have meanings correlative to the foregoing).

(b) "Business Day" shall mean a day, Monday through Friday, on which banks are generally open for business in each of New York, New York; Boston, Massachusetts; and Buffalo Grove, Illinois.

(c) "Holders" shall mean the Subscriber and any person holding Registrable Securities as defined below, or any person to whom the rights under Section V have been transferred in accordance with Section 5.9 hereof, and who, if known by the Company, shall be specifically named by the Company as selling stockholders in the Registration Statement (as defined below).

(d) "Person" shall mean any person, individual, corporation, limited liability company, partnership, trust or other nongovernmental entity or any governmental agency, court, authority or other body (whether foreign, federal, state, local or otherwise).

(e) The terms "register," "registered" and "registration" refer to the registration effected by preparing and filing with the SEC a registration statement in compliance with the Act, and the declaration or ordering by the SEC of the effectiveness of such registration statement.

(f) "Registrable Securities" shall mean the shares of Common Stock issuable upon conversion of the Series B Preferred Stock and exercise of the Warrants and any shares of capital stock issued or issuable, from time to time, as a distribution on or in exchange for or otherwise with respect to any of the foregoing (including the Series B Preferred Stock and the Warrants), whether as default payments, on account of anti-dilution or other adjustments or otherwise (including without limitation all shares of Replacement Common Stock, if any); provided, however, that securities shall only be treated as Registrable Securities if and only for so long as they (A) have not been disposed of pursuant to a registration statement declared effective by the SEC, (B) have not been sold in a transaction exempt from the registration and prospectus delivery requirements of the Act so that all transfer restrictions and restrictive legends with respect thereto are removed upon the consummation of such sale, and (C) are held by a Holder or a permitted transferee pursuant to Section 5.9.

(g) "Registration Expenses" shall mean all expenses incurred by the Company in complying with Section 5.2 hereof, including, without limitation, all registration, qualification and filing fees, printing expenses, escrow fees, fees and expenses of counsel for the Company, blue sky fees and expenses and the expense of any special audits incident to, or required by, any such registration (but excluding the aggregate fees of legal counsel for all Holders).

(h) "Registration Statement" shall have the meaning ascribed to such term in Section 5.2 (a).

(i) "Registration Period" shall have the meaning ascribed to such term in Section 5.4 (a).

(j) "Required Senior Lenders" shall mean "Required Lenders" as such term is defined in the Senior Credit Agreement.

(k) "Selling Expenses" shall mean all underwriting discounts and selling commissions applicable to the sale of Registrable Securities and the aggregate fees and expenses of legal counsel for all Holders.

(l) "Senior Credit Agreement" shall mean that certain Credit Agreement dated as of October 7, 2003 by and among the Company, Akorn (New Jersey), Inc., the financial institutions from time to time party thereto, as lenders, and LaSalle Bank, National Association, as administrative agent, as such Credit Agreement may be amended, restated, supplemented or otherwise modified from time to time.

5.2 The Company shall, as soon as practicable, but not later than thirty (30) days after the Closing Date (the "Filing Date"), (i) use its reasonable best efforts to file with the SEC a registration statement on Form S-1 (the "Registration Statement") with respect to the resale of the Registrable Securities and use its reasonable best efforts to have such Registration Statement declared effective by the SEC within 90 days from the Closing Date and (ii) cause such Registration Statement to remain effective for the Registration Period. Without limiting the generality of the foregoing, within three business days after any Registration Statement that includes Registrable Securities is declared effective by the SEC, the Company shall cause legal counsel selected by the Company to deliver to the transfer agent for the Registrable Securities (with copies to any Holder whose Registrable Securities are included in such Registration Statement), an opinion of such counsel providing that such Registrable Securities are available for resale under the Act pursuant to the Registration Statement. If such Registration Statement is not declared effective within such 90 day period from the Closing Date, the Holders will have the following rights:

(a) If the Registration Statement is not declared effective within 120 days from the Closing Date (or if the SEC issues any stop order(s) suspending the effectiveness of the Registration Statement for a period of more than 60 days during such 120 day period), then for each 30 day period following the end of such 120 day period until the earlier to occur of (i) the Registration Statement becomes effective, (ii) the end of the Registration Period, or (iii) the exercise by the Holder of the option to sell such Holder's shares of Series B Preferred Stock pursuant to Section 5.2(b) below, and the Company's satisfaction of its obligation under Section 5.2(b) below, the Company will pay to each Holder an amount equal to 1.0% of the purchase price set forth upon the signature page hereof for the shares of Series B Preferred Stock purchased by such Holder, and for any partial 30 day period the Company shall pay a prorated amount based on the number of days in such partial period. Payments of amounts due under this Section 5.2(a), if any, shall be made by the Company to each Holder (i) 270 days from the Closing Date, and (ii) on the last day of each calendar year thereafter.

(b) If the Registration Statement is not declared effective within 270 days from the Closing Date, each Holder will have the right, for a period of 60 days following the end of such 270 day period, to sell to the Company, and the Company shall have the obligation to purchase from each Holder, the shares of Series B Preferred Stock held by such Holder, for cash, at a purchase price equal to 115% of the purchase price set forth upon the signature page hereof for the shares of Series B Preferred Stock purchased by such Holder prorated in the event such right is not exercised as to all such shares. Holder shall exercise this right by completing and delivering the notice of exercise attached hereto as Exhibit A together with the stock certificate for the shares duly endorsed in blank (together, the "Notice of Exercise") within such 60 day period. Payment of the purchase price under this Section 5.2(b) shall be made by the Company within 15 days of receipt of the Notice of Exercise by the Company to each exercising Holder who delivers such notice within the requisite 60 day period.

(c) (i) Notwithstanding the foregoing clauses (a) and (b) (the "Penalty Provisions"), the Company and each Holder hereby acknowledge that (i) the Holder's right to receive payments in cash pursuant to the Penalty Provisions is subordinate to the Company's obligations under the Senior Credit Agreement as in effect on the date hereof, (ii) the Company cannot make any payment in cash to the Holders pursuant to the Penalty Provisions without (x) the prior written consent of the Required Senior Lenders or (y) unless the Company's obligations under the Senior Credit Agreement are satisfied. Nothing in this Section 5.2(c) shall prohibit the accrual and compounding of dividends pursuant to the terms of the Series B Preferred Stock and the conversion of the Series B Preferred Stock into shares of Common Stock issuable as a result of any such accrual and compounding of dividends, as provided in paragraph D to Article V of the Articles of Incorporation of the Company, as amended.

(ii) The Company may, in its sole discretion, in place of any cash payment otherwise due to the Holder pursuant to Section 5.2(a) above (each a "Penalty Cash Payment"), pay to such Holder when such Penalty Cash Payment is otherwise due, for no further consideration, the number of fully paid, validly issued and non-assessable shares of Common Stock, free from all taxes, liens, claims and encumbrances (the "Replacement Common Stock") equal to the number obtain by dividing the amount of (x) the Penalty Cash Payment by (y) the Closing Price (defined below) on the date immediately preceding the date such Penalty Cash Payment is otherwise due. Any fractions of shares of Replacement Common Stock shall be rounded up to the nearest whole number of shares. The Company covenants that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, a sufficient number of shares of Replacement Common Stock, free from preemptive rights or any other contingent purchase rights of persons other than the Holder. For purposes of this Agreement, the "Closing Price" per share of Common Stock on any date shall mean the closing sale price on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Common Stock or such other securities are listed or admitted to trading or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the last quoted sale price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the NASD Automated Quotation System or such other system then in use, or, if on any such date the Common Stock or such other securities are not quoted by any such organization, the average of

the closing bid and asked prices as furnished by a professional market maker, selected by the Board of Directors and reasonably acceptable to the holders of a majority of the outstanding shares of Series B Preferred Stock, making a market in the Common Stock or such other securities of the Company.

5.3 All Registration Expenses incurred in connection with any registration, qualification, exemption or compliance pursuant to Section 5.2 shall be borne by the Company. All Selling Expenses relating to the sale of securities registered by or on behalf of Holders shall be borne by such Holders pro rata on the basis of the number of securities so registered.

5.4 In the case of the registration, qualification, exemption or compliance effected by the Company pursuant to this Agreement, the Company shall, upon reasonable request, inform each Holder as to the status of such registration, qualification, exemption and compliance. At its expense the Company shall:

(a) use its reasonable best efforts to keep such registration, and any qualification, exemption or compliance under state securities laws which the Holders reasonably request the Company to obtain, continuously effective as to all Registrable Securities until the earlier of: (i) the Holders having completed the distribution of the Registrable Securities described in the Registration Statement relating thereto; or (ii) with respect to any Holder, such time as all Registrable Securities then held by such Holder may be sold in compliance with Rule 144 under the Act within any three-month period. The period of time during which the Company is required hereunder to keep the Registration Statement effective is referred to herein as “the Registration Period”;

(b) advise the Holders (or in the case of (ii) below, advise the Placement Agent):

(i) when the Registration Statement or any amendment thereto has been filed with the SEC and when the Registration Statement or any post-effective amendment thereto has become effective;

(ii) of any request by the SEC for amendments or supplements to the Registration Statement or the prospectus included therein or for additional information;

(iii) of the issuance by the SEC of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for such purpose;

(iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities included therein for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and

(v) subject to the limitations set forth in Section 5.7(b)(ii) hereof, of the happening of any event that requires the making of any changes in the Registration Statement or the prospectus so that, as of such date, the statements therein are not misleading and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the prospectus, in the light of the circumstances under which they were made) not misleading;

(c) make every reasonable effort to obtain the withdrawal of any order suspending the effectiveness of any Registration Statement at the earliest possible time;

(d) furnish to each Holder, without charge, at least one copy of such Registration Statement and any post-effective amendment or supplement thereto, including financial statements and schedules, and, if the Holder so requests in writing, all exhibits (excluding those incorporated by reference) in the form filed with the SEC;

(e) during the Registration Period, deliver to each Holder, without charge, a reasonable number of copies of the prospectus included in such Registration Statement and any amendment or supplement thereto as such Holder may reasonably request; and the Company consents to the use, consistent with the provisions hereof, of the prospectus and any amendment or supplement thereto by each of the selling Holders of Registrable Securities in connection with the offering and sale of the Registrable Securities covered by the prospectus and any amendment or supplement thereto;

(f) during the Registration Period, deliver to each Holder, upon request, (i) a copy of the full Registration Statement (excluding exhibits); (ii) all exhibits excluded by the parenthetical to the immediately preceding clause (i); and (iii) such other documents as may be reasonably requested by the Holder.

(g) prior to any public offering of Registrable Securities pursuant to the Registration Statement, register or qualify or obtain an exemption for the offer and sale under the securities or blue sky laws of such jurisdictions as any such Holders reasonably request in writing, provided that the Company shall not for any such purpose be required to qualify generally to transact business as a foreign corporation in any jurisdiction where it is not so qualified or to consent to general service of process in any such jurisdiction, and do any and all other acts or things reasonably necessary or advisable to enable the offer and sale in such jurisdictions of the Registrable Securities covered by the Registration Statement;

(h) cooperate with the Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold pursuant to the Registration Statement, free of any restrictive legends to the extent not required at such time and in such denominations and registered in such names as Holders may request;

(i) upon the occurrence of any event contemplated by Section 5.4(b)(v) above, the Company shall promptly prepare a post-effective amendment to the Registration Statement or a supplement to the related prospectus, or file any other required document so that, as thereafter delivered to purchasers of the Registrable Securities included therein, the prospectus will not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(j) use its reasonable best efforts to comply in all material respects with all applicable rules and regulations of the SEC, and make generally available to the Holders not later than 45 days (or 90 days if the fiscal quarter is the fourth fiscal quarter) after the end of its fiscal quarter in which the first anniversary date of the effective date of the Registration Statement occurs, an earnings statement satisfying the provisions of Section 11(a) of the Act; and

(k) at the request of any Subscriber, the Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to any Registration Statement required to be filed hereunder and the prospectus used in connection with such Registration Statement as may be necessary in order to change the plan of distribution set forth in such Registration Statement.

5.5 The Holders shall have no right to take any action to restrain, enjoin or otherwise delay any registration pursuant to Section 5.2 hereof as a result of any controversy that may arise with respect to the interpretation or implementation of this Agreement.

5.6 (a) To the extent permitted by law, the Company shall indemnify each Holder, each underwriter of the Registrable Securities and each person controlling such Holder and each such underwriter within the meaning of Section 15 of the Act, and each director, officer, partner, member, employee and agent of each such Holder and each such underwriter, with respect to which any registration, qualification or compliance has been sought, contemplated by or required pursuant to this Agreement, against all claims, losses, expenses, costs, damages and liabilities (or action in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened (subject to Section 5.6(c) below), arising out of or based on (i) any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus or offering circular, or any amendment or supplement thereof, incident to any such registration, qualification or compliance, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances in which they were made, or (ii) any violation or alleged violation by the Company of the Act, the Exchange Act, or any rule or regulation promulgated under the Act or the Exchange Act, and shall reimburse each Holder, each underwriter of the Registrable Securities and each person controlling such Holder and each such underwriter, for reasonable legal and other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action as and when incurred; provided that the Company shall not be liable in any such case to the extent that any untrue statement or omission or allegation thereof is made in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Holder or underwriter and stated to be specifically for use in such registration statement, prospectus or offering circular; provided that the Company shall not be liable in any such case where the claim, loss, damage or liability arises out of or is related to the failure of the Holder to comply with the covenants and agreements contained in Section 5.7 hereof, and except that the foregoing indemnity agreement is subject to the condition that, insofar as it relates to any such untrue statement or alleged untrue statement or omission or alleged omission made in the preliminary prospectus but eliminated or remedied in the amended prospectus on file with the SEC at the time the registration statement becomes effective or in the amended prospectus filed with the SEC pursuant to Rule 424(b) of the Act or in the prospectus subject to completion under Rule 434 of the Act, which together meet the requirements of

Section 10(a) of the Act (the “Final Prospectus”), such indemnity agreement shall not inure to the benefit of any such Holder, any such underwriter or any such controlling person, if a copy of the Final Prospectus furnished by the Company to the Holder for delivery was not furnished to the person or entity asserting the loss, liability, claim or damage at or prior to the time such furnishing is required by the Act and the Final Prospectus would have cured the defect giving rise to such loss, liability, claim or damage. Except as otherwise set forth herein, the Company shall reimburse each Holder, upon such Holder’s demand, for all reasonably necessary expenses and costs which are incurred, as and when incurred, by such Holder as a result of the indemnification claims described in this Section 5.6(a). Such demand may be made from time to time prior to resolution of the claim. In no event shall the Company be liable for the expenses and costs of more than one attorney on behalf of the Holders unless in the reasonable judgment of a Holder, based upon written advice of its counsel, a conflict of interest exists between the Holders with respect to such claims, in which case the Company shall reimburse the Holders for additional attorneys.

(b) Each Holder will severally and not jointly, if Registrable Securities held by such Holder are included in the securities as to which such registration, qualification or compliance is being effected, indemnify the Company, each of its directors and officers, each underwriter of the Registrable Securities and each person who controls the Company and each underwriter of the Registrable Securities within the meaning of Section 15 of the Act, against all claims, losses, expenses, costs, damages and liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened (subject to Section 5.6(c) below), arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus or offering circular, or any amendment or supplement thereof, incident to any such registration, qualification or compliance or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances in which they were made, and will reimburse the Company, such directors and officers, each underwriter of the Registrable Securities and each person controlling the Company and each underwriter of the Registrable Securities for reasonable legal and any other expenses or costs reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action as and when incurred, in each case to the extent, but only to the extent, that such untrue statement or omission or allegation thereof is made in reliance upon, and in conformity with, written information furnished to the Company by or on behalf of the Holder and stated to be specifically for use in such registration statement, prospectus or offering circular; provided that the indemnity shall not apply to the extent that such claim, loss, damage or liability results from the fact that a current copy of the prospectus or offering circular was not made available to the Holder and such current copy of the prospectus or offering circular would have cured the defect giving rise to such loss, claim, expense, costs, damage or liability. Notwithstanding the foregoing, in no event shall a Holder be liable for any such claims, losses, expenses, costs, damages or liabilities in excess of the proceeds received by such Holder in that offering, except in the event of fraud by such Holder and such fraud gave rise in whole or in part to such loss, claim, expense, cost, damage or liability.

(c) Each party entitled to indemnification under this Section 5.6 (the “Indemnified Party”) shall give notice to the party required to provide indemnification (the “Indemnifying Party”) promptly after such Indemnified Party has actual knowledge of any claim

as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld), and the Indemnified Party may participate in such defense with its own counsel at such Indemnified Party's expense unless the named parties to any proceeding covered hereby (including any impleaded parties) include both the Company or any others the Company may designate and one or more Indemnified Persons, and representation of the Indemnified Persons and such other parties by the same counsel would be inappropriate due to actual or potential differing interests between them, and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Agreement, unless such failure is materially prejudicial to the Indemnifying Party in defending such claim or litigation. An Indemnifying Party shall not be liable for any settlement of an action or claim effected without its written consent (which consent will not be unreasonably withheld).

(d) If the indemnification provided for in this Section 5.6 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any loss, liability, claim, damage, cost or expense referred to therein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party thereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, liability, claim, damage, cost or expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions which resulted in such loss, liability, claim, damage, cost or expense as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied or which should have been supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; provided, however, that (a) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any seller of Registrable Securities who was not guilty of such fraudulent misrepresentation, and (c) contribution (together with any indemnification or other obligations under this Agreement) by any seller of Registrable Securities shall be limited in amount to the net amount of proceeds received by such seller from the sale of such Registrable Securities.

5.7 (a) Subject to the limitations set forth in Section 5.7(b)(ii) below, upon receipt of any notice from the Company of the happening of any event requiring the preparation of a supplement or amendment to a prospectus relating to Registrable Securities so that, as thereafter delivered to the Holders, such prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, each Holder shall forthwith discontinue disposition of Registrable Securities pursuant to the registration statement contemplated by Section 5.2 until its receipt of copies of the supplemented or amended prospectus from the Company and, if so directed by the Company, each Holder shall deliver to the Company all copies, other than permanent file copies then in such Holder's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

(b) Any Holder which owns five percent (5%) or more (and with respect to 5.7(b)(ii), “any Holder” regardless of how many shares of Common Stock the Holder owns) of the Company’s outstanding Common Stock shall suspend, upon request of the Company, any disposition of Registrable Securities pursuant to the Registration Statement and prospectus contemplated by Section 5.2 during (i) any period not to exceed one 180-day period within any one 12-month period the Company requires in connection with an underwritten offering of equity securities and (ii) any period, not to exceed two 45-day periods within any 12-month period, when the Company determines in good faith that offers and sales pursuant thereto should not be made by reason of the presence of material undisclosed circumstances or developments with respect to which the disclosure that would be required in such a prospectus is premature and may reasonably be expected to have an adverse effect on the Company. The period of time in which the disposition of Registrable Securities pursuant to the Registration Statement and prospectus is so suspended shall be referred to as a “Black-Out Period.” The Company agrees to so advise the Holders promptly of the commencement and termination of any such Black-Out Period, and the Holders agree to keep the fact of such Black-Out Period confidential.

(c) As a condition to the inclusion of its Registrable Securities, each Holder shall furnish to the Company such information regarding such Holder, the securities of the Company owned beneficially or of record by such Holder and the distribution proposed by such Holder as the Company may request in writing to the extent such information is required in connection with any registration, qualification or compliance referred to in this Section V.

(d) With respect to any sale of Registrable Securities pursuant to a Registration Statement filed pursuant to this Section V, each Holder hereby covenants with the Company not to make any sale of the Registrable Securities without effectively causing the prospectus delivery requirements under the Act to be satisfied.

(e) At the end of the Registration Period, the Holders of Registrable Securities included in the Registration Statement shall discontinue sales of shares pursuant to such Registration Statement upon receipt of notice from the Company of its intention to remove from registration the shares covered by such Registration Statement which remain unsold.

5.8 (a) So long as any Holder (or any of their respective affiliates) beneficially owns any of the Registrable Securities, the Company shall maintain the listing or eligibility for quotation of all Registrable Securities then issued on each national securities exchange, automated quotation system or electronic bulletin board on which shares of Common Stock are currently listed. The Company shall use its reasonable best efforts to continue the trading of its Common Stock on the OTC Bulletin Board®, or on the Nasdaq SmallCap Market, the Nasdaq National Market, the American Stock Exchange or the New York Stock Exchange and will comply in all material respects with the reporting, filing and other obligations under the bylaws or rules of the NASD, such exchanges or such electronic system, as applicable.

(b) With a view to making available to the Holders the benefits of certain rules and regulations of the SEC which at any time permit the sale of the Registrable Securities to the public without registration, the Company shall use its reasonable best efforts:

(i) to make and keep public information available, as those terms are understood and defined in Rule 144 under the Act, at all times;

(ii) to file with the SEC in a timely manner all reports and other documents required of the Company under the Exchange Act; and

(iii) so long as a Holder owns any Registrable Securities, to furnish to such Holder upon any reasonable request a written statement by the Company as to its compliance with Rule 144 under the Act, and of the Exchange Act, and a copy of the most recent annual or quarterly report of the Company, and such other reports and documents of the Company as such Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing a Holder to sell any such securities without registration.

5.9 The rights and obligations of the Holders under this Section V may not be assigned or transferred to or assumed by any transferee or assignee except (i) to a transferee that acquires at least 20% of such Holder's Registrable Securities or (ii) to an Affiliate or limited or general partner of a Holder; provided that such transfer was not in violation of this Agreement or the Securities Laws.

VI. MISCELLANEOUS

6.1 Any notice or other communication given hereunder shall be deemed sufficient in writing and sent by (a) telecopy or facsimile at the address or number designated below (if delivered on a business day during normal business hours where such notice is to be received); or (b) registered or certified mail, return receipt requested, or delivered by hand against written receipt therefor, addressed to Akorn, Inc., Facsimile: (847) 279-6123, Attention: Chief Financial Officer, with a copy to Leerink Swann & Company, One Federal Street, Boston, Massachusetts 02110, Facsimile (617) 918-4900, Attention: Stuart R. Barich. Notices shall be deemed to have been given or delivered on the date of mailing, except notices of change of address, which shall be deemed to have been given or delivered when received.

6.2 This Agreement shall not be changed, modified or amended except by a writing signed by the parties to be charged, and this Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the party to be charged.

6.3 Upon the execution and delivery of this Agreement by the Subscriber, this Agreement shall become a binding obligation of the Subscriber with respect to the purchase of Securities as herein provided, subject to acceptance by the Company and the Placement Agent; subject, however, to the right hereby reserved to the Company to enter into the same agreements with other subscribers and to add and/or delete other persons as subscribers.

6.4 Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all the terms and provisions hereof shall be construed in accordance with and governed by the laws of the State of New York without regard to principles of conflicts of law.

6.5 The holding of any provision of this Agreement to be invalid or unenforceable by a court of competent jurisdiction shall not affect any other provision of this Agreement, which

shall remain in full force and effect. If any provision of this Agreement shall be declared by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced in whole or in part, such provision shall be interpreted so as to remain enforceable to the maximum extent permissible consistent with applicable law and the remaining conditions and provisions or portions thereof shall nevertheless remain in full force and effect and enforceable to the extent they are valid, legal and enforceable, and no provisions shall be deemed dependent upon any other covenant or provision unless so expressed herein.

6.6 It is agreed that a waiver by either party of a breach of any provision of this Agreement shall not operate, or be construed, as a waiver of any subsequent breach by that same party.

6.7 The parties agree to execute and deliver all such further documents, agreements and instruments and take such other and further action as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

6.8 This Agreement may be executed in two or more counterparts each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

6.9 On or before 9:00 a.m., New York time, on the first business day following the Closing Date, the Company shall file a Current Report on Form 8-K describing the terms of the transactions contemplated by this Agreement in the form required by the Exchange Act and attaching the material terms of this Agreement (including, without limitation, this Agreement, and the form of Warrant) as exhibits to such filing (including all attachments, the "8-K Filing"). As of the filing of the 8-K Filing with the SEC, the Subscriber shall not be in possession of any material, nonpublic information that it received from the Company or any of its respective officers, directors, employees or agents, that is not disclosed in the 8-K Filing. The Company shall not, and shall cause each of its respective officers, directors, employees and agents, not to, provide the Subscriber with any material, nonpublic information regarding the Company from and after the filing of the 8-K Filing with the SEC without the express written consent of the Subscriber. Neither the Company nor the Subscriber shall issue any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, that the Company shall be entitled, without the prior approval of the Subscriber, to make any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filing or (ii) as may be required by applicable law, rule or regulation (provided that in the case of clause (i) the Subscriber shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release). Notwithstanding the foregoing, the Company shall not publicly disclose the name of the Subscriber, or include the name of the Subscriber in any filing with the SEC or any regulatory agency, without the prior written consent of the Subscriber, except (i) for disclosure thereof in the 8-K Filing or Registration Statement or (ii) as required by law or regulations or any order of any court or other governmental agency, in which case the Company shall provide the Subscriber with prior notice of such disclosure.

6.10 Nothing in this Agreement shall create or be deemed to create any rights in any person or entity not a party to this Agreement, except for the Placement Agent and the holders of Registrable Securities.

6.11 Any pronoun herein shall include all genders and/or the plural or singular as appropriate from the context.

6.12 Each Subscriber acknowledges that it has independently evaluated the merits of the transactions contemplated by this Agreement, that it has independently determined to enter into the transactions contemplated hereby and thereby, that it is not relying on any advice from or evaluation by any other Subscriber, and that it is not acting in concert with any other Subscriber in making its purchase of securities hereunder or in monitoring its investment in the Company. The Subscribers and, to its knowledge, the Company agree that the Subscribers have not taken any actions that would deem such Subscribers to be members of a “group” for purposes of Section 13(d) of the Exchange Act, and the Subscribers have not agreed to act together for the purpose of acquiring, holding, voting or disposing of equity securities of the Company. Each Subscriber further acknowledges that BayStar Capital II, LP has retained Drinker Biddle & Reath LLP (“DB&R”) to act as its counsel in connection with the transactions contemplated by this Agreement and that DB&R has not acted as counsel for any of the other Subscribers in connection therewith and none of the other Subscribers have the status of a client of DB&R for conflict of interest or other purposes as a result thereof.

6.13 The representations and warranties of the Subscriber and the Company contained in Sections 1 and 2 of this Agreement shall survive the Closing for a period of one (1) year; provided, however, that nothing in this Section 6.13 shall prejudice the enforceability of any other provision of this Agreement.

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VII. CONFIDENTIAL INVESTOR QUESTIONNAIRE

7.1 The Subscriber represents and warrants that he, she or it comes within one category marked below, and that for any category marked, he, she or it has truthfully set forth, where applicable, the factual basis or reason the Subscriber comes within that category. ALL INFORMATION IN RESPONSE TO THIS SECTION VII WILL BE KEPT STRICTLY CONFIDENTIAL. The undersigned agrees to furnish any additional information which the Company deems necessary in order to verify the answers set forth below.

- Category A ___ The undersigned is an individual (not a partnership, corporation, etc.) whose individual net worth, or joint net worth with his or her spouse, presently exceeds \$1,000,000.
- Explanation. In calculating net worth you may include equity in personal property and real estate, including your principal residence, cash, short-term investments, stock and securities. Equity in personal property and real estate should be based on the fair market value of such property less debt secured by such property.
- Category B ___ The undersigned is an individual (not a partnership, corporation, etc.) who had an individual income in excess of \$200,000 in each of the two most recent years, or joint income with his or her spouse in excess of \$300,000 in each of those years (in each case including foreign income, tax exempt income and full amount of capital gains and losses but excluding any income of other family members and any unrealized capital appreciation) and has a reasonable expectation of reaching the same income level in the current year.
- Category C ___ The undersigned is a director or executive officer of the Company.
- Category D ___ The undersigned is a bank; a savings and loan association; insurance company; registered investment company; registered business development company; licensed small business investment company or "SBIC"; or employee benefit plan within the meaning of Title 1 of Employee Retirement Income Security Act or "ERISA" and (a) the investment decision is made by a plan fiduciary which is either a bank, savings and loan association, insurance company or registered investment advisor, or (b) the plan has total assets in excess of \$5,000,000 or is a self-directed plan with investment decisions made solely by persons that are accredited investors.

(describe entity)

Category E ___ The undersigned is a private business development company as defined in section 202(a)(22) of the Investment Advisors Act of 1940.

(describe entity)

Category F ___ The undersigned is either a corporation, partnership, Massachusetts business trust, or nonprofit organization within the meaning of Section 501(c)(3) of the Internal Revenue Code, in each case not formed for the specific purpose of acquiring the Securities and with total assets in excess of \$5,000,000.

(describe entity)

Category G ___ The undersigned is a trust with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the Securities where the purchase is directed by a “sophisticated person” as defined in Regulation 506(b)(2)(ii) under the Act.

Category H ___ The undersigned hereby certifies that it is an accredited investor because all of its equity owners are accredited investors. The Company, in its sole discretion, may request information regarding the basis on which such equity owners are accredited.

Category I ___ The undersigned hereby certifies that it is an accredited investor because it has total assets in excess of \$5,000,000 and was not formed for the specific purpose of acquiring the Securities.

Category J ___ The undersigned is not within any of the categories above and is therefore not an accredited investor.

The Company will notify a prospective Subscriber whether such Subscriber is eligible to purchase Securities pursuant to this Agreement (and the Company, in its sole discretion, retains the right to accept or reject all such purchases). The undersigned agrees that it will notify the Company at any time on or prior to the Closing Date in the event that the representations and warranties in this Investor Questionnaire shall cease to be true, accurate and complete.

7.2 SUITABILITY (please answer each question)

(a) For all Subscribers, please list types of prior investments:

(b) For all Subscribers, please state whether you have participated in other private placements before:

YES ___ NO ___

(c) If your answer to question (b) above was "YES", please indicate frequency of such prior participation in private placements of:

	<u>Public Companies</u>	<u>Private Companies</u>	<u>Biotechnology, Pharmaceutical and Other Life Science Companies *</u>
Frequently	___	___	___
Occasionally	___	___	___
Never	___	___	___

**indicate how many companies, whether public or private, are in the biotechnology, pharmaceutical or other life sciences sectors.*

(d) For trust, corporate, partnership and other institutional Subscribers, do you expect your total assets to significantly decrease in the foreseeable future?

YES ___ NO ___

(e) For all Subscribers, do you have any other investments or contingent liabilities which you reasonably anticipate could cause you to need sudden cash requirements in excess of cash readily available to you?

YES ___ NO ___

(f) For all Subscribers, are you familiar with the risk aspects and the non-liquidity of investments such as the securities for which you seek to subscribe?

YES ___ NO ___

(g) For all Subscribers, do you understand that there is no guarantee of financial return on this investment and that you run the risk of losing your entire investment?

YES ___ NO ___

7.3 MANNER IN WHICH TITLE IS TO BE HELD. (circle one)

- (a) Individual Ownership
- (b) Community Property
- (c) Joint Tenant with Right of Survivorship (both parties must sign)
- (d) Partnership*
- (e) Tenants in Common
- (f) Company*
- (g) Trust*
- (h) Other

*If Securities are being subscribed for by an entity, the attached Certificate of Signatory must also be completed.

7.4 NASD AFFILIATION.

Are you affiliated or associated with an NASD member firm (please check one)?

YES ___ NO ___

If yes, please describe:**

7.5 STOCK OWNERSHIP

Do you beneficially own any shares of the Company's Common Stock or any securities convertible into or exercisable for shares of the Company's Common Stock?

YES ___ NO ___

If yes, please describe, including number of shares:

7.6 COMPANY RELIANCE ON THIS QUESTIONNAIRE

The undersigned is informed of the significance to the Company of the foregoing representations and answers contained in this Section VII and such answers have been provided under the assumption that the Company and its counsel will rely on them.

SIGNATURE PAGE

Date Signed: _____, 2004

Number of shares of Series B Preferred Stock: _____

Multiplied by Offering Price per share:

x \$ 100.00

Equals subscription amount:

= _____

“INVESTOR” *(Name in which securities should be issued)*

By: _____

Print Name: _____

Title: _____

Address _____

City, State and Zip Code _____

Telephone-Business _____

Facsimile-Business _____

Tax ID # or Social Security # _____

***The attached Certificate of Signatory must also be completed.**

This Subscription Agreement is agreed to and accepted as of ___, 2004.

AKORN, INC.

By:

Name:

Title:

CERTIFICATE OF SIGNATORY

(To be completed if Securities are being subscribed for by an entity)

I, _____, am the _____ of _____ (the "Entity").

I certify that I am empowered and duly authorized by the Entity to execute and carry out the terms of the Subscription Agreement and to purchase and hold the Securities, and certify further that the Subscription Agreement has been duly and validly executed on behalf of the Entity and constitutes a legal and binding obligation of the Entity.

IN WITNESS WHEREOF, I have set my hand this ___ day of ___, 2004.

(Signature)

SCHEDULE 1.5

ADDITIONAL RISK FACTORS

1. **Additional Capital.** The Company may require funds in addition to those being raised in this Offering to operate and grow the Company's business. The Company may seek additional funds through public and private financing, including equity and debt offerings. However, adequate funds through the financial markets or from other sources may not be available when needed or on terms favorable to the Company or to the Subscriber. In addition, because the Company's Common Stock currently is traded on the OTC Bulletin Board®, the Company may experience further difficulty accessing the capital markets. Without sufficient additional funding, the Company may be required to delay, scale back or abandon some or all of the Company's product development, manufacturing, acquisition, licensing and marketing initiatives, or operations. Further, such additional financing, if obtained, may require the granting of rights, preferences or privileges senior to those of the Common Stock and Series B Preferred Stock and result in substantial dilution of the existing ownership interests of the Common Stockholders, Series B Preferred Stockholders and potentially the holders of warrants as well.
2. **Registration.** Despite the Company's reasonable best efforts under the terms of this Agreement, there can be no assurance that any registration statement filed with respect to the Securities will become or remain effective. In addition, there is no assurance regarding the price for which the Securities may be sold or that there will be buyers for the Securities offered for sale under such a registration statement. Therefore, the Subscriber may bear the economic risk of the Subscriber's investment for an indefinite period of time and may not be able to sell the Securities at any price on the open market or otherwise.
3. **Limited market for Common Stock and no established market for the Series B Preferred Stock and Warrants.** The Common Stock is not listed on any exchange or on the Nasdaq Stock Market®, although it is quoted on the OTC Bulletin Board®. We are in the process of seeking a listing on an exchange for our Common Stock. Currently, there is no market for the Series B Preferred Stock and the Warrants. We do not expect to qualify for or seek such listing for the Warrants in the foreseeable future. There can be no assurance that you will be able to sell your shares of Series B Preferred Stock or Warrants, or the Common Stock issuable upon conversion or exercise, respectively, at any time in the future or at all or that a more active trading market will develop in the foreseeable future. In addition, the price at which you may be able to sell is very unpredictable because there are very few trades in the Common Stock. Because the Common Stock is so thinly traded, a large block of shares traded can lead to a dramatic fluctuation in the share price.
4. **Concentrated ownership of Common Stock creates a risk of sudden changes in our share price.** The sale by any of our large shareholders of a significant portion of that shareholder's holdings could have a material adverse effect on the market price of the Common Stock. In addition, the issuance of shares of the Series B Preferred Stock and their subsequent conversion into Common Stock in connection with this offering would have the immediate effect of increasing the public float of the Common Stock. Such increase may cause the market price of our Common Stock to decline or fluctuate significantly.

5. Future Dilution. If the price per share of the Company's Common Stock at the time of exercise or conversion of any preferred stock, warrants, options, convertible subordinated debt, or any other convertible securities (collectively, "Convertible Securities"), including all of the Convertible Securities set forth in the Company's SEC Filings, is in excess of the various exercise or conversion prices of such Convertible Securities, exercise or conversion of such Convertible Securities would have a dilutive effect on the Company's Common Stock. The amount of such dilution, however, cannot currently be determined as it would depend on the difference between the stock price and the price at which the Convertible Securities were exercised or converted at the time of such exercise or conversion.

6. General. The Subscriber should be aware that the risk factors of the Company set forth in this Schedule 1.5, the Agreement and the Company's SEC Filings, including without limitation the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2003, are in no way inclusive of all the potential risks associated with the Company. The Subscriber should not rely upon the disclosures contained herein in any decision to provide financing to the Company, but should complete its own independent investigation as to the suitability and as to the risk and potential loss involved with providing financing to the Company.

EXHIBIT A
AKORN, INC.
NOTICE OF EXERCISE UNDER
SECTION 5.2(B) OF THE
SUBSCRIPTION AGREEMENT DATED AUGUST __, 2004

To AKORN, INC.:

The undersigned holder ("Holder") of shares of Series B 6% Participating Convertible Preferred Stock (the "Series B Preferred Stock") hereby irrevocably elects to exercise the Holder's right pursuant to Section 5.2(b) of the above referenced Subscription Agreement, to sell ___ shares of Series B Preferred Stock represented by certificate no. ___ (the "Stock Certificate") to the Company for the price of \$___ in cash, which sum represents the aggregate purchase price for such shares of Series B Preferred Stock (as determined under Section 5.2(b) of the Subscription Agreement) to which this Notice of Exercise relates. The Stock Certificate is enclosed with this notice, duly endorsed in blank.

HOLDER:

[Name of holder as specified on the face of the stock certificate]

[Signature of person signing on behalf of holder]

[Print name and title (if any) of person signing on behalf of holder (if different) {i.e. "John Smith, President"}]

[Address]

[Date]

The foregoing Subscription Agreement was entered into on August 18, 2004, by and between Akorn, Inc. and each of the following investors and for the following subscription amounts:

Investor	Subscription Amount
BayStar Capital II, LP	\$ 5,000,000
Merlin BioMed Offshore Fund	\$ 700,000
Merlin BioMed Long Term Appreciation, L.P.	\$ 300,000
Millennium Partners, L.P.	\$ 1,500,000
Morgan Stanley & Co.	\$ 1,000,000
Pequot Healthcare Fund, L.P.	\$ 2,055,300
Pequot Healthcare Offshore Fund, Inc.	\$ 2,624,600
Premium Series PCC Limited Call C32	\$ 320,100
Sigma Capital Associates, LLC	\$ 600,000

NEITHER THESE SECURITIES NOR THE SECURITIES ISSUABLE UPON EXERCISE OF THESE SECURITIES HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS AS EVIDENCED BY A LEGAL OPINION OF COUNSEL TO THE TRANSFEROR TO SUCH EFFECT, THE SUBSTANCE OF WHICH SHALL BE REASONABLY ACCEPTABLE TO THE COMPANY. THESE SECURITIES AND THE SECURITIES ISSUABLE UPON EXERCISE OF THESE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT SECURED BY SUCH SECURITIES.

AKORN, INC.

WARRANT

Warrant No. []

Date of Original Issuance: August [], 2004

Akorn, Inc., a Louisiana corporation (the "**Company**"), hereby certifies that, for value received, _____ or its registered assigns (the "**Holder**"), is entitled to purchase from the Company up to a total of [] shares of common stock, no par value per share (the "**Common Stock**"), of the Company (each such share, a "**Warrant Share**" and all such shares, the "**Warrant Shares**") at an exercise price equal to \$3.50 per share (as adjusted from time to time as provided in Section 9, the "**Exercise Price**"), at any time and from time to time from and after the date hereof and through and including August [], 2009 (the "**Expiration Date**"), and subject to the following terms and conditions:

1. Definitions. In addition to the terms defined elsewhere in this Warrant, capitalized terms that are not otherwise defined herein shall have the meanings given to such terms in the Subscription Agreement of even date herewith to which the Company and the original Holder are parties (the "**Purchase Agreement**").

2. Registration of Warrant. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "**Warrant Register**"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

3. Registration of Transfers. The Company shall register the transfer of any portion of this Warrant in the Warrant Register, upon surrender of this Warrant, with the Form of Assignment attached hereto duly completed and signed, to the Company at its address specified herein. Upon any such registration or transfer, a new Warrant to purchase Common Stock, in substantially the form of this Warrant (any such new Warrant, a “**New Warrant**”), evidencing the portion of this Warrant so transferred shall be issued to the transferee and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations of a holder of a Warrant.

4. Exercise and Duration of Warrants. This Warrant shall be exercisable by the registered Holder at any time and from time to time on or after the date hereof to and including the Expiration Date. At 6:30 p.m., New York City time on the Expiration Date, the portion of this Warrant not exercised prior thereto shall be and become void and of no value. The Company may not call or redeem all or any portion of this Warrant without the prior written consent of the Holder.

5. Delivery of Warrant Shares.

(a) To effect exercises hereunder, the Holder shall not be required to physically surrender this Warrant unless the aggregate Warrant Shares represented by this Warrant is being exercised. Upon delivery of the Exercise Notice to the Company (with the attached Warrant Shares Exercise Log) at its address for notice set forth herein and upon payment of the Exercise Price multiplied by the number of Warrant Shares that the Holder intends to purchase hereunder, the Company shall promptly (but in no event later than three business days after the Date of Exercise (as defined herein)) issue and deliver to the Holder, a certificate for the Warrant Shares issuable upon such exercise, which, unless otherwise required by the Purchase Agreement, shall be free of restrictive legends. The Company shall, upon request of the Holder and subsequent to the date on which a registration statement covering the resale of the Warrant Shares has been declared effective by the Securities and Exchange Commission, use its best efforts to deliver Warrant Shares hereunder electronically through the Depository Trust Corporation or another established clearing corporation performing similar functions, if available, provided, that, the Company may, but will not be required to change its transfer agent if its current transfer agent cannot deliver Warrant Shares electronically through the Depository Trust Corporation. A “**Date of Exercise**” means the date on which the Holder shall have delivered to Company: (i) the Exercise Notice (with the Warrant Exercise Log attached to it), appropriately completed and duly signed and (ii) if such Holder is not utilizing the cashless exercise provisions set forth in this Warrant, payment of the Exercise Price for the number of Warrant Shares so indicated by the Holder to be purchased.

(b) If by the third business day after a Date of Exercise the Company fails to deliver the required number of Warrant Shares in the manner required pursuant to Section 5(a), then the Holder will have the right to rescind such exercise. The Company shall indemnify and reimburse the Holder for all losses and damages arising as a result of or related to any breach of the terms of this Warrant by the Company or its agent, including costs and expenses (including legal fees) incurred by such Holder in connection with the enforcement of its rights hereunder.

(c) The Company's obligations to issue and deliver Warrant Shares in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with the issuance of Warrant Shares. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

6. Charges, Taxes and Expenses. Issuance and delivery of certificates for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, withholding tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the registration of any certificates for Warrant Shares or Warrants in a name other than that of the Holder. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

7. Replacement of Warrant. If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable indemnity (which shall not include a surety bond), if requested. Applicants for a New Warrant under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Company may prescribe. If a New Warrant is requested as a result of a mutilation of this Warrant, then the Holder shall deliver such mutilated Warrant to the Company as a condition precedent to the Company's obligation to issue the New Warrant.

8. Reservation of Warrant Shares. The Company covenants that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of Warrant Shares which are then issuable and deliverable upon the exercise of this entire Warrant, free from preemptive rights or any other contingent purchase rights of persons other than the Holder (taking into account the adjustments and restrictions of Section 9). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable and free from all taxes, liens, claims and encumbrances.

9. Certain Adjustments. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 9.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides outstanding shares of Common Stock into a larger number of shares, or (iii) combines outstanding shares of Common Stock into a smaller number of shares, then in each such case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this paragraph occurs during the period that an Exercise Price is calculated hereunder, then the calculation of such Exercise Price shall be adjusted appropriately to reflect such event.

(b) Fundamental Transactions. If, at any time while this Warrant is outstanding, (1) the Company effects any merger or consolidation of the Company with or into another Person, (2) the Company effects any sale of all or substantially all of its assets in one or a series of related transactions, (3) any tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to tender or exchange their shares for other securities, cash or property, or (4) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a "**Fundamental Transaction**"), then the Holder shall have the right thereafter to receive, upon exercise of this Warrant, the same amount and kind of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the number of Warrant Shares then issuable upon exercise in full of this Warrant (the "**Alternate Consideration**"). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. At the Holder's option and request, any successor to the Company or surviving entity in such Fundamental Transaction shall, either (1) issue to the Holder a new warrant substantially in the form of this Warrant and consistent with the foregoing provisions and evidencing the Holder's right to purchase the Alternate Consideration for the aggregate Exercise Price upon exercise thereof, or (2) purchase the Warrant from the Holder for a purchase price, payable in cash within five Business days after

such request (or, if later, on the effective date of the Fundamental Transaction), equal to the Black Scholes value of the remaining unexercised portion of this Warrant on the date of such request. The terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this paragraph (c) and insuring that the Warrant (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

(c) Number of Warrant Shares. Simultaneously with any adjustment to the Exercise Price pursuant to paragraph (a) of this Section, the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the adjusted number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(d) Calculations. All calculations under this Section 9 shall be made to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(e) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 9, the Company at its expense will promptly compute such adjustment in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder and to the Company's transfer agent.

(f) Notice of Corporate Events. If the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including without limitation any granting of rights or warrants to subscribe for or purchase any capital stock of the Company or any Subsidiary, (ii) authorizes or approves, enters into any agreement contemplating or solicits stockholder approval for any Fundamental Transaction or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then the Company shall deliver to the Holder a notice describing the material terms and conditions of such transaction, at least 20 calendar days prior to the applicable record or effective date on which a Person would need to hold Common Stock in order to participate in or vote with respect to such transaction, and the Company will take all steps reasonably necessary in order to insure that the Holder is given the practical opportunity to exercise this Warrant prior to such time so as to participate in or vote with respect to such transaction; provided, however, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice.

10. Payment of Exercise Price. The Holder may pay the Exercise Price in one of the following manners:

(a) Cash Exercise. The Holder may deliver immediately available funds; or

(b) Cashless Exercise. The Holder may notify the Company in an Exercise Notice of its election to utilize cashless exercise, in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows:

$$X = Y [(A-B)/A]$$

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the number of Warrant Shares with respect to which this Warrant is being exercised.

A = the average of the closing prices for the five business days immediately prior to (but not including) the Exercise Date.

B = the Exercise Price.

For purposes of Rule 144 promulgated under the Securities Act, it is intended, understood and acknowledged that the Warrant Shares issued in a cashless exercise transaction shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the date this Warrant was originally issued.

11. No Fractional Shares. No fractional shares of Warrant Shares will be issued in connection with any exercise of this Warrant. In lieu of any fractional shares which would, otherwise be issuable, the Company shall pay cash equal to the product of such fraction multiplied by the closing price of one Warrant Share as reported by the OTC Bulletin Board® or such other automated quotation system or national exchange on which the Common Stock is then traded.

12. Notices. Any and all notices or other communications or deliveries hereunder (including, without limitation, any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section prior to 6:30 p.m. (New York City time) on a business day, (ii) the next business day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number specified in this Section on a day that is not a business day or later than 6:30 p.m. (New York City time) on any business day, (iii) the business day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. The addresses for such communications shall be: (i) if to the Company, to Akom, Inc., Attn: Chief Financial Officer, Facsimile No.: (847) 279-6123, or (ii) if to the Holder, to the address or facsimile number appearing on the Warrant Register or such

other address or facsimile number as the Holder may provide to the Company in accordance with this Section.

13. Warrant Agent. The Company shall serve as warrant agent under this Warrant. Upon 30 days' notice to the Holder, the Company may appoint a new warrant agent. Any corporation into which the Company or any new warrant agent may be merged or any corporation resulting from any consolidation to which the Company or any new warrant agent shall be a party or any corporation to which the Company or any new warrant agent transfers substantially all of its corporate trust or shareholders services business shall be a successor warrant agent under this Warrant without any further act. Any such successor warrant agent shall promptly cause notice of its succession as warrant agent to be mailed (by first class mail, postage prepaid) to the Holder at the Holder's last address as shown on the Warrant Register.

14. Registration Rights. The Holder is entitled to the benefit of such registration rights in respect of the Warrant Shares as are set forth in the Purchase Agreement, including the right to assign such rights to certain assignees, as set forth therein.

15. Miscellaneous.

(a) This Warrant shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns, including, in the case of the Company, any entity succeeding to the Company by merger, consolidation, or acquisition of all or substantially all of the Company's assets. Subject to the preceding sentence, nothing in this Warrant shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant. This Warrant may be amended only in writing signed by the Company and the Holder and their successors and assigns.

(b) All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof.

(c) The headings herein are for convenience only, do not constitute a part of this Warrant and shall not be deemed to limit or affect any of the provisions hereof.

(d) In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK,
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by its authorized officer as of the date first indicated above.

AKORN, INC.

By: _____

Name: _____

Title: _____

AKORN, INC.
WARRANT ORIGINALLY ISSUED AUGUST [], 2004
WARRANT NO. []

EXERCISE NOTICE

To **AKORN, INC.:**

- The undersigned hereby irrevocably elects to exercise the above captioned Warrant to purchase _____ shares of Common Stock and encloses herewith \$_____ in cash, certified or official bank check or checks or other immediately available funds, which sum represents the aggregate Exercise Price (as defined in the Warrant) for the number of shares of Common Stock to which this Exercise Notice relates, together with any applicable taxes payable by the undersigned pursuant to the Warrant.
- The undersigned hereby elects to convert ___ percent (___%) of the value of the Warrant pursuant to the provisions of Section 10(b) of the Warrant.

The undersigned requests that certificates for the shares of Common Stock issuable upon this exercise be issued in the name of

PLEASE INSERT SOCIAL SECURITY OR TAX
IDENTIFICATION NUMBER

(Please print name and address)

Warrant Shares Exercise Log

Date	Number of Warrant Shares Available to be Exercised	Number of Warrant Shares Exercised	Number of Warrant Shares Remaining to be Exercised
-------------	---	---	---

AKORN, INC.
WARRANT ORIGINALLY ISSUED AUGUST [], 2004
WARRANT NO. []

FORM OF ASSIGNMENT

[To be completed and signed only upon transfer of Warrant]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ the right represented by the above-captioned Warrant to purchase _____ shares of Common Stock to which such Warrant relates and appoints _____ attorney to transfer said right on the books of the Company with full power of substitution in the premises.

Dated: _____, ____

(Signature must conform in all respects to name of holder as specified on the face of the Warrant)

Address of Transferee

In the presence of:

The foregoing Warrant, dated August 18, 2004, was issued by Akorn, Inc. to each of the following investors and for the following Warrant Shares (as defined in the Warrant):

Investor	Warrant Shares
Baystar Capital II, LP	555,556
Merlin BioMed Offshore Fund	77,778
Merlin BioMed Long Term Appreciation, L.P.	33,333
Millennium Partners, L.P.	166,667
Morgan Stanley & Co.	111,111
Pequot Healthcare Fund, L.P.	228,367
Pequot Healthcare Offshore Fund, Inc.	291,622
Premium Series PCC Limited Call C32	35,567
Sigma Capital Associates, LLC	66,667

August 5, 2004

Leerink Swann & Company
One Federal Street, 37th Floor
Boston, MA 02110

Re: Placement Agent Services

Ladies and Gentlemen:

This letter will confirm the understanding concerning placement agent services to be provided by Leerink Swann & Company ("Leerink") to Akom, Inc. ("Akom"). Leerink is being engaged by Akom to help Akom on a "best efforts" basis to market to accredited investors a proposed investment in Akom's capital stock and warrants, or other instruments deemed appropriate by Akom, in a "PIPE" transaction or other private placement (the "Transaction").

Leerink agrees to assist in structuring the Transaction, in cooperation with Akom's officers, directors, attorneys and accountants. Leerink's assistance shall include, but not be limited to: (i) assisting Akom in determining the price at which shares of capital stock should be offered for sale; (ii) evaluating the advantages and disadvantages of offering warrants as a "package deal" with the shares of capital stock sold, including a study of the various pricing options available; (iii) collaborating with Akom's legal counsel in the preparation of the subscription documents; and (iv) directing Akom and its officers in the sales effort prior to the actual commencement of the offering. It is understood that execution of this agreement does not assure the successful completion of the Transaction.

In consideration for Leerink's services in connection with the Transaction, Akom shall pay Leerink six percent (6%) of the gross cash proceeds received by Akom from the Transaction (the "Placement Agent Fee"), payable upon the consummation of the Transaction. If the Transaction is consummated by means of more than one closing, Leerink shall be entitled to the fees provided herein with respect to each such closing. Any proceeds received by Akom upon the exercise or conversion of any securities that are issued to investors in connection with the Transaction shall not be included for purposes of calculating the Placement Agent Fee and Leerink shall not be entitled to any additional payments upon the exercise or conversion of such securities. In addition and regardless of whether the Transaction is consummated, upon request by Leerink from time to time, Akom shall reimburse Leerink for all reasonable out-of-pocket expenses incurred by Leerink in connection with its engagement hereunder, including reasonable fees and expenses of its counsel, up to \$25,000.00 in the aggregate.

Akom acknowledges and agrees that Leerink has been retained solely to provide the advice or services set forth in this agreement. Leerink shall act as an independent contractor, and any duties of Leerink arising out of its engagement hereunder shall be owed solely to Akom. As Leerink will be acting on your behalf in such capacity, it is our firm practice to be indemnified in connection with engagements of this type and Akom agrees to the indemnification agreement attached hereto as Exhibit A. Any advice, written or oral, provided by Leerink pursuant to this agreement will be treated by Akom as confidential, will be solely for the information and

assistance of Akom in connection with the Transaction and may not be quoted, nor will any such advice or the name of Leerink be referred to, in any report, document, release or other communication, whether written or oral, prepared, issued or transmitted by Akom or any affiliate, director, officer, employee, agent or representative of any thereof, without, in each instance, Leerink 's prior written consent.

Leerink represents and warrants that it shall comply with all rules and regulations applicable to it in connection with the Transaction and that it is licensed or registered as it is required to be to perform its obligations in connection with the Transaction and agrees to maintain the effectiveness of such license or registration throughout the term of the Transaction.

If this accurately reflects your understanding, then please execute two copies of this agreement and return them in the envelope provided. We look forward to working with Leerink in the successful completion of this transaction.

Sincerely,

/s/ Jeffrey A. Whitnell

Jeffrey A. Whitnell, Chief Financial Officer

Acknowledged and accepted:

Leerink Swann & Company

By: /s/ Stuart Barich

Its: Managing Director

EXHIBIT A

This Exhibit A is entered into pursuant to, and is made a part of, the attached agreement (the “Agreement”) between Leerink and Akorn (the “Company”). Capitalized terms used and not defined in this Exhibit A shall have the meanings assigned them in the attached Agreement.

The Company agrees to indemnify and hold harmless Leerink, its affiliates, and each of its partners, directors, officers, consultants, employees, advisors, representatives and controlling persons (each an “Indemnified Person”) from and against any claims, losses, damages, expenses or liabilities (collectively, “Losses”), including without limitation any time spent by Leerink’s professional and legal advisors (subject to the limitations set forth below), incurred in connection with investigating, preparing, defending, paying, settling or compromising any action, claim or proceeding to which any Indemnified Person may become subject and which is related to or arises out of the engagement set forth in the Agreement or the transactions contemplated thereby. The Company will not, however, be responsible to an Indemnified Person with respect to any Losses to the extent that a court of competent jurisdiction shall have determined by a final judgment not subject to further appeal that such Losses resulted substantially from actions taken or omitted to be taken by such or any other Indemnified Person due to the Indemnified Person’s or any other Indemnified Person’s gross negligence, bad faith, violation of law or willful misconduct.

The Company will reimburse each Indemnified Person for Losses as such Losses are incurred or paid, notwithstanding the absence of judicial determination as to the propriety or enforceability of the Company’s obligation to reimburse such Indemnified Person for such Losses and the possibility that such payments might later be held by a court of competent jurisdiction to have been improper. To the extent that any such reimbursement is so held to have been improper, the Indemnified Person shall promptly return it to the Company, together with interest, compounded annually, equal to the prevailing prime rate as published from time to time by *The Wall Street Journal*.

If the indemnification provided for herein should be, for any reason whatsoever, unenforceable, unavailable or otherwise insufficient to hold each Indemnified Person harmless, the Company shall pay to or on behalf of each Indemnified Person contributions for Losses so that the Indemnified Person ultimately bears only a portion of such Losses as is appropriate (i) to reflect the relative benefits received by such Indemnified Person on the one hand and the Company on the other hand in connection with this engagement and any transactions contemplated hereby or (ii) if the allocation on the basis set forth in the immediately preceding clause (i) is not permitted by applicable law, to reflect not only the relative benefits referred to in such clause (i) but also the relative fault of the Indemnified Person and the Company as well as any other relevant equitable considerations; provided, however, that in no event shall the aggregate contribution of all Indemnified Persons to all Losses exceed the amount of the fees actually received by Leerink pursuant to the Agreement. The respective relative benefits received by all Indemnified Persons and the Company shall be deemed to be in the same proportion as the aggregate fee paid to Leerink pursuant to the Agreement bears to the total consideration paid or contemplated to be paid to, or received by, the Company or its stockholders, as the case may be, in connection with transactions contemplated by the Agreement, whether or not such transactions are consummated. The relative fault of each Indemnified Person and the Company shall be determined by reference to, among other things, whether the actions or failures to act were by such Indemnified Person or the Company, and the parties’ relative intent, knowledge, access to information and opportunity to

correct or prevent such action or failure to act. Notwithstanding the foregoing, no Indemnified Person shall have any obligation to investigate or verify the information provided to Leerink in connection with their providing financial advisory services under the Agreement, and the Company shall be solely liable for any Losses related to or arising out of the use of such information that is inaccurate for any reason.

The Company also agrees that no Indemnified Person shall have any liability to the Company or its affiliates, directors, officers, employees, Leerink, consultants, advisors, representatives, control persons or stockholders, directly or indirectly, related to or arising out of the Agreement or any transactions contemplated thereby, in connection with claims by third parties except Losses incurred by the Company to the extent a court of competent jurisdiction shall have determined by a final judgment not subject to further appeal that such Losses resulted primarily from actions taken or the failure to take actions by such Indemnified Person due to such Indemnified Person's gross negligence, bad faith, violation of law or willful misconduct. In no event, regardless of the legal theory advanced, shall any Indemnified Person be liable for any consequential, indirect, incidental or special damages of any nature. Leerink likewise indemnifies the Company in the event of gross negligence, bad faith, material violation of law or willful misconduct on the part of any Leerink party, subject to the limit of the fees actually paid to Leerink hereunder. Leerink will reimburse the Company for Losses related to the foregoing as such Losses are paid, notwithstanding the absence of judicial determination as to the propriety or enforceability of Leerink's obligation to reimburse the Company for such Losses and the possibility that such payments might later be held by a court of competent jurisdiction to have been improper. To the extent that any such reimbursement is so held to have been improper, the Company shall promptly return it to Leerink, together with interest, compounded annually, equal to the prevailing prime rate as published from time to time by *The Wall Street Journal*.

In case any proceeding shall be instituted involving any Indemnified Person, such Indemnified Person shall promptly notify the Company in writing. The failure of an Indemnified Person to provide such prompt notice shall not reduce such Indemnified Person's right to indemnification or contribution hereunder to the extent that such failure does not materially prejudice the ability to defend such proceeding. The Company shall retain counsel reasonably satisfactory to Leerink to represent the Indemnified Persons and any others the Company may designate in such proceeding, shall have sole control of the defense of any such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person, except to the extent that (i) the Company and the Indemnified Person shall have mutually agreed to the retention of such counsel at the Company's expense or (ii) the named parties to any such proceeding (including any impleaded parties) include both the Company or any others the Company may designate and one or more Indemnified Persons, and representation of the Indemnified Persons and such other parties by the same counsel would be inappropriate due to actual or potential differing interests between them. In any case in which one or more Indemnified Persons are entitled to separate counsel due to such actual or potential differing interests, the Company shall not be liable for the expenses of more than one separate counsel, and such counsel shall be designated in writing by Leerink. The Company shall have sole control of any settlement of any proceeding for which it is obligated to provide indemnification hereunder. Notwithstanding the foregoing the Company shall not, without the prior written consent of the Indemnified Person, effect any settlement of, or consent to the entry of any judgment in connection with, any pending

or threatened proceeding in respect of which such Indemnified Person is or could have been a party and indemnity or contribution could have been sought hereunder by such Indemnified Person, unless such settlement or judgment includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of the proceeding.

The obligations of the Company referred to above shall be in addition to any rights that any Indemnified Person may otherwise have and shall inure to the benefit of and be binding upon any successors, assigns, heirs and personal representatives of any Indemnified Person or the Company.

Leerink Swann & Company

By: /s/ Stuart Barich
Stuart Barich
Managing Director
Corporate Finance

Agreed to and Accepted:

AKORN, Inc.

By: Jeffrey A. Whitnell
Jeffrey A. Whitnell
Chief Financial Officer

Date: August 5, 2004

WAIVER AND CONSENT TO CREDIT AGREEMENT

THIS WAIVER AND CONSENT TO CREDIT AGREEMENT (this "Consent") is executed and delivered as of this 23rd day of August, 2004 among LASALLE BANK NATIONAL ASSOCIATION, as administrative agent (the "Administrative Agent"), the financial institutions party hereto (the "Lenders"), AKORN, INC., a Louisiana corporation ("Akorn") and Akorn (New Jersey), Inc., an Illinois corporation ("Akorn New Jersey").

WITNESSETH:

A. The Administrative Agent, Akorn, Akorn New Jersey and the Lenders entered into a Credit Agreement dated as of October 7, 2003 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"). Capitalized terms used but not defined herein shall have the meanings attributed to them in the Credit Agreement.

B. Akorn intends to (i) enter into that certain Subscription Agreement dated as of 18th August, 2004 (the "Subscription Agreement") along with the subscribers named therein pursuant to which Akorn will issue Capital Securities in Akorn (a copy of which is attached hereto as Exhibit A) and (ii) to issue the Capital Securities as contemplated thereunder (the foregoing referred to herein in as the "Transaction").

C. The Companies have requested that the Administrative Agent and the Required Lenders consent to the action to be taken by the Companies in connection with the Transaction with respect to the Credit Agreement, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto hereby agree as follows:

1. **Waiver and Consent.** Subject to the terms and conditions herein, the Required Lenders hereby (i) consent to Akorn's the issuance of the Capital Securities in accordance with the Subscription Agreement and Akorn's execution of an amendment to its Akorn's articles of incorporation (the "Charter Amendment") (a copy of which is attached hereto as Exhibit B) and (ii) waive any Event of Default which, if not for the execution of this Consent, would arise under Sections 13.1.1, 13.1.5(a) or 13.1.5(b) of the Credit Agreement resulting solely from (A) the failure or inability to reduce the Revolving Commitment Amount in violation of Section 6.1.2 of the Credit Agreement, (B) the Company's issuance of Capital Securities in violation of Sections 11.5(b) and 11.10 of the Credit Agreement and (C) the amending of Akorn's articles of incorporation in violation of 11.6 of the Credit Agreement; provided, that the foregoing clauses (i) and (ii) are expressly conditioned upon the satisfaction of the conditions to effectiveness set forth in Section 3 hereof, including, without limitation, receipt by the Administrative Agent of the Loan Payment amount referenced in clause (b) of Section 3 hereof.

2. **Representations and Warranties.** To induce the Administrative Agent and the Required Lenders to execute this Consent, each Company represents and warrants to the Administrative Agent and the Lenders as follows: (a) each Company has all requisite power and authority to execute, deliver and perform this Consent; (b) this Consent constitutes the legal,

valid and binding obligation of each Company, enforceable against each Company in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity; (c) the representations and warranties in the Loan Documents are true and correct in all material respects with the same effect as though made on and as of the date of this Consent (except to the extent stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct as of such earlier date); and (d) after giving effect to this Consent, no Unmatured Event of Default or Event of Default exists.

3. Conditions to Effectiveness. The effectiveness of this Consent is expressly conditioned upon delivering to the Administrative Agent all of the following in form and substance acceptable to the Administrative Agent: (a) this Consent executed by each Company, the Administrative Agent and the Required Lenders; (b) receipt by the Administrative Agent in accordance with Section 6.2.2(a)(ii) of the Credit Agreement (i) of an irrevocable payment in an amount sufficient to repay the Term Loan in full and (ii) of an irrevocable payment in an amount sufficient to reduce the outstanding Revolving Loans to \$0.00 (such payments collectively referred to as the "Loan Payment Amount") and (c) an executed copy of the Subscription Agreement and the Charter Amendment certified by the secretary of Akorn as true, accurate and complete.

4. Affirmation. Except as specifically provided in this Consent, the execution, delivery and effectiveness of this Consent shall not operate as a waiver or forbearance of any Default or Event of Default or any right, power or remedy of the Administrative Agent or any Lender under the Credit Agreement or any of the other Loan Documents, or constitute a consent, waiver or modification with respect to any provision of the Credit Agreement or any of the other Loan Documents, and the Company hereby fully ratifies and affirms each Loan Document to which it is a party. Reference in any of this Consent, the Credit Agreement or any other Loan Document to the Credit Agreement shall be a reference to the Credit Agreement as modified hereby and as further amended, modified, restated, supplemented or extended from time to time. This Consent shall constitute a Loan Document for purposes of the Credit Agreement and the other Loan Documents. In addition, each of the Companies hereby reaffirms and acknowledges that, notwithstanding anything contained in the Subscription Agreement, the Charter Amendment or any other document executed in connection with the Transaction, each is prohibited from making any redemptions, purchases, re-purchases or any other form of payment with respect their Capital Securities except as specifically permitted by Section 11.4 of the Credit Agreement.

5. Counterparts. This Consent may be executed in two or more counterparts, each of which shall constitute an original, but all of which when taken together shall constitute one instrument. Delivery of an executed counterpart of this Consent by facsimile shall be effective as delivery of an original counterpart.

6. Headings. The headings and captions of this Consent are for the purposes of reference only and shall not affect the construction of, or be taken into consideration in interpreting, this Consent.

7. **Further Assurances.** Each Company agrees to execute and deliver, or cause to be executed and delivered, in form and substance satisfactory to the Administrative Agent and the Lenders, such further documents, instruments, amendments and financing statements and to take such further action, as may be necessary from time to time to perfect and maintain the liens and security interests created by the Loan Documents.

8. **APPLICABLE LAW.** THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS WITHOUT GIVING EFFECT TO ILLINOIS CHOICE OF LAW DOCTRINE.

9. **Acknowledgment.** Each Company hereby waives, discharges and forever releases the Administrative Agent and each of the Lenders, and each of said Person's employees, officers, directors, attorneys, stockholders and successors and assigns, from and of any and all claims, causes of action, allegations or assertions that either Company has or may have had at any time through (and including) the date of this Consent, against any or all of the foregoing, regardless of whether any such claims, causes of action, allegations or assertions are known to either Company or whether any such claims, causes of action, allegations or assertions arose as a result of the Administrative Agent's or any Lender's actions or omissions in connection with the Credit Agreement, including any amendments or modifications thereto, or otherwise.

[signature pages follow]

IN WITNESS WHEREOF, this Consent has been duly executed and delivered as of the day and year first above written.

AKORN, INC.

By: /s/ Arthur S. Przybyl
Title: President & CEO

AKORN (NEW JERSEY), INC.

By: /s/ Arthur S. Przybyl
Title: President & CEO

LASALLE BANK NATIONAL ASSOCIATION, as
Administrative Agent and Lender

By: /s/ Patrick J. O'Toole
Title: Vice President

**CONSENT AND AGREEMENT OF
HOLDERS OF SERIES A 6.0% PARTICIPATING
CONVERTIBLE PREFERRED STOCK
OF
AKORN, INC.**

August 17, 2004

This Consent and Agreement of Holders of Series A 6.0% Participating Convertible Preferred Stock is made and entered into by Akorn, Inc., a Louisiana corporation (the "Company") and the undersigned holders of Series A 6.0% Participating Convertible Preferred Stock of the Company ("Series A Stock") with respect to the following:

WHEREAS, the Board of Directors of the Company (the "Board") has determined that it is in the best interests of the Company and its stockholders that Articles of Amendment to the Articles of Incorporation of the Company, in substantially the same form as attached hereto as Exhibit A (the "Amendment"), be filed with the Secretary of State of Louisiana to (i) authorize, and designate the rights, preferences and privileges of, One Hundred Seventy Thousand (170,000) shares of Series B 6.0% Participating Convertible Preferred Stock of the Company (the "Series B Stock"); and (ii) provide for additional changes or modifications to the Amendment consistent with the intent of the foregoing;

WHEREAS, the Board has determined that it is in the best interests of the Company and its stockholders to authorize the issuance of the Series B Stock and warrants to purchase common stock ("Warrants") in a private placement transaction to certain accredited investors (the "Offering") on substantially the same terms and provisions as set forth in the form of subscription agreement attached hereto as Exhibit B (the "Subscription Agreement");

WHEREAS, pursuant to (i) Section 2.2 of that certain Registration Rights Agreement dated as of October 7, 2003, by and among the Company and each holder of Series A Stock (the "Series A Registration Rights Agreement"), each of the undersigned has the opportunity to register under the Registration Statement (as defined in the Subscription Agreement) such number of Registrable Securities (as defined in the Series A Registration Rights Agreement) as each of the undersigned may request; and (ii) Section 2(a) of that certain Registration Rights Agreement dated July 12, 2001, by and between the Company and The John N. Kapoor Trust Dated September 20, 1989 (the "Kapoor Trust"), as amended (the "Kapoor Registration Rights Agreement"), the Kapoor Trust has the opportunity to register under the Registration Statement (as defined in the Subscription Agreement) such number of Registrable Securities (as defined in the Kapoor Registration Rights Agreement) as the Kapoor Trust may request (collectively, the registration rights referred to in clause (i) and (ii) shall hereinafter referred to as the "Right to Include Registrable Securities");

WHEREAS, the holders of Series A Stock and the Kapoor Trust are willing to permit the Offering to proceed on the terms set forth in the Subscription Agreement, wish to have the opportunity to exercise their Right to Include Registrable Securities in the Registration Statement, but do not desire that the Series A Registration Rights Agreement be amended as provided in Section 4.1 thereof, and desire that the Company enter into the Subscription Agreements notwithstanding the provisions of Section 4.2 of the Series A Registration Rights Agreement;

WHEREAS the undersigned holders of Series A Stock, desire to act in accordance with the Articles of Incorporation of the Company, and the Louisiana Business Corporation Law, and to waive the requirement of a meeting and consent and agree to the following with respect to their rights under the

Articles of Incorporation of the Company, and all of the undersigned desire to enter in appropriate agreements with respect to the foregoing;

NOW, THEREFORE, the Company and the undersigned, constituting each Significant Holder (as defined in the Articles of Amendment to the Articles of Incorporation of the Company, dated as of October 3, 2003, governing the Series A Stock) and the holders of a majority of the outstanding shares of the Series A Stock, in their capacities as holders of Series A Stock and in their capacities as parties to the Series A Registration Rights Agreement, and with respect to the Kapoor Trust, also in its capacity as a party to the Kapoor Registration Rights Agreement, hereby agree as follows:

1. The Amendment is ratified and approved, and the undersigned hereby consent to the filing by the officers of the Company of the Amendment with the Secretary of State of Louisiana to effectuate the amendment of the Articles of Incorporation, with any such changes or modifications from the language set forth in the Amendment as they shall deem necessary or appropriate.

2. The terms and provisions of the Subscription Agreement are ratified and approved.

3. The Offering is approved, and the undersigned hereby consent to the issuance of the Series B Stock and Warrants in the Offering and to the issuance of securities upon the conversion or exercise thereof as set forth in the Subscription Agreement and in the Amendment, and on such terms as the Board, any committee of the Board to which the Board delegates such responsibility and the officers of the Company, and any of them, shall deem necessary or appropriate.

4. Other than the Right to Include Registrable Securities, none of the rights under the Subscription Agreement apply to or amplify the rights of the undersigned, and the terms and conditions contained in the Subscription Agreement shall not be deemed to have amended the Series A Registration Rights Agreement as would otherwise be the case under Section 4.1 of the Series A Registration Rights Agreement.

5. To the extent of any inconsistency or conflict between the Series A Registration Rights Agreement and the Subscription Agreement, such inconsistencies are hereby approved and the terms of the Subscription Agreement shall govern.

6. To the extent this document amends the Series A Registration Rights Agreement, such agreement shall continue in full force and effect subject to the terms of such amendment.

7. Any and all actions whether previously or subsequently taken by the officers and directors of the Company, which are consistent with and in furtherance of the intent and purposes of the foregoing and the consummation of the transactions contemplated herein, shall be and the same hereby are, in all respects, ratified, approved and confirmed.

[Signature Page to Follow.]

The execution of this Consent and Agreement shall constitute a written waiver of any notice as may be required by the By-laws. Upon the execution of this Consent and Agreement, which may be executed in one or more counterparts and by facsimile, by each Significant Holder (as defined in the Articles of Amendment to the Articles of Incorporation of the Company, dated as of October 3, 2003, governing the Series A Stock) and the holders of a majority of the outstanding shares of the Series A Stock, in their capacities as holders of Series A Stock and in their capacities as parties to the Series A Registration Rights Agreement, and with respect to the Kapoor Trust, also in its capacity as a party to the Kapoor Registration Rights Agreement, and each of which shall be deemed an original for all purposes, and all of which together shall constitute one instrument, this Consent and Agreement shall be effective as of the date first written above.

/s/ Arjun C. Waney
Arjun Waney

/s/ Abu Alam
Abu Alam

/s/ John Sabat
John Sabat

/s/ Shritin Shah
Shritin Shah

/s/ Jerry Treppel
Jerry Treppel

Pequot Navigator Onshore Fund, LP
/s/ Aryeh Davis
By: Aryeh Davis
Its: General Counsel

Arun K. Puri Living Trust
/s/ A.K. Puri
By: A.K. Puri
Its: Trustee

Wheaton Healthcare Partners LP
/s/ Jerry Treppel
By: Jerry Treppel
Its: General Partner

Pequot Healthcare Institutional Fund LP
/s/ Aryeh Davis
By: Aryeh Davis
Its: General Counsel

/s/ Gulu Waney
Gulu Waney

/s/ Arthur Przybyl
Arthur Przybyl

/s/ Neil E. Shanahan
Neil Shanahan

/s/ Jai Waney
Jai Waney

JRJAY Public Investments, LLP

/s/ Jeffrey R. Jay, M.D.
By: Jeffrey R. Jay, M.D.
Its: CEO

Argent Fund Management Ltd.
/s/ K.B. Ramchand
By: K.B. Ramchand
Its: Director

Pequot Scout Fund, L.P.
/s/ Aryeh Davis
By: Aryeh Davis
Its: General Counsel

Pequot Healthcare Offshore Fund Inc.
/s/ Aryeh Davis
By: Aryeh Davis
Its: General Counsel

Pequot Healthcare Fund LP
/s/ Aryeh Davis
By: Aryeh Davis
Its: General Counsel

The John Kapoor Trust DTD 9/20/89

/s/ John N. Kapoor

By: John N. Kapoor

Its: Trustee

Acknowledged, Accepted and Agreed:

Akorn, Inc.

By: /s/ Jeffrey A. Whitnell

Its: CFO

EXHIBIT A
ARTICLES OF AMENDMENT

ARTICLES OF AMENDMENT
to
ARTICLES OF INCORPORATION
of
AKORN, INC.

Pursuant to Section 33 of the Louisiana Business Corporation Law (“LBCL”) and Article V(B) of its articles of incorporation (the “Articles”), Akorn, Inc., a Louisiana corporation (the “Corporation”), acting through its undersigned President and Chief Executive Officer, does hereby certify as follows:

(i) Immediately prior hereto, the authorized capital stock of the Corporation consisted of (i) 150,000,000 shares of common stock, no par value per share, of which 20,612,684 shares were issued and outstanding; and (ii) 5,000,000 shares of preferred stock, \$1.00 par value per share, of which 257,172 shares of Series A 6.0% Participating Convertible Preferred Stock (the “Series A Preferred Stock”) were issued and outstanding pursuant to the Articles of Amendment filed with the Louisiana Secretary of State on October 6, 2003 (the “Series A Preferred Stock Designations”). The preferences, limitations and relative rights of the Series A Preferred Stock are as set forth in the Series A Preferred Stock Designations, and the authority vested in the Board of Directors of the Corporation (the “Board of Directors”) to amend the Articles of Incorporation to fix the relative rights, preferences and limitations of the shares of any class and to establish and fix variations in relative rights as between series of any preferred or special class, are as set forth in the Articles of Amendment filed with the Louisiana Secretary of State on March 3, 1997; and

(ii) On August 18, 2004, the Board of Directors of the Corporation duly adopted resolutions approving an amendment to the Corporation’s Articles to add a new paragraph (D) to Article V, reading in its entirety as follows:

D. A series of authorized Preferred Stock, par value \$1.00 per share, of the Corporation is hereby created having the designation and amount, the voting powers, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions set forth below.

SECTION 1. DESIGNATION AND AMOUNT.

The shares of such series shall be designated as the “Series B 6.0% Participating Convertible Preferred Stock” (the “Series B Preferred Stock”) and the number of shares constituting such series shall be 170,000 shares of Series B Preferred Stock.

SECTION 2. RANK.

The Series B Preferred Stock shall, with respect to payment of dividends, distributions and the distribution of assets upon liquidation, winding up or dissolution, rank (i) senior to all Junior Securities, (ii) on a parity with all Parity Securities and (iii) junior to all Senior Securities.

SECTION 3. DIVIDENDS AND DISTRIBUTIONS.

(a) Payment and Accrual of Dividends.

(i) The holders of shares of Series B Preferred Stock shall be entitled to receive on each Dividend Payment Date, in respect of the Dividend Period ending on (and including) the date immediately prior to such Dividend Payment Date, dividends on each share of Series B Preferred Stock at the rate of 6.0% (the "Dividend Rate") per annum on the Accrued Value thereof from and after the Issuance Date, provided that with respect to the Initial Dividend Period, the dividends set forth above shall be prorated based on the number of days in such period. Such dividends shall be fully cumulative and accumulate and accrue on a daily basis (computed on the basis of a 360-day year of twelve 30-day months) and compound quarterly in arrears on the Dividend Payment Dates at the rate indicated above and in the manner set forth herein, whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. If the Corporation at any time does not have a sufficient number of shares of Common Stock duly authorized and reserved for issuance upon conversion of all of the outstanding shares of Series B Preferred Stock, shares of the Series B Preferred Stock shall accrue dividends at a rate equal to 10.0% per annum of the Accrued Value, accruing and compounding in the manner set forth in this Section 3(a) from such date until such shares are converted into shares of Common Stock, in each case in accordance with this Article V(D).

(ii) Such dividends shall, at the option of the Company, either be paid in cash or accrue and compound and be added to the Accrued Value on the applicable Dividend Payment Dates, provided, however, that all dividends payable on any given Dividend Payment Date must either (i) all be paid in cash or (ii) all accrue and compound and be added to the Accrued Value, in each case on the Dividend Payment Date. Each such dividend which is payable in cash shall be payable on the Dividend Payment Date to the holders of record of shares of the Series B Preferred Stock, as they appear on the transfer books of the Corporation at the close of business on the day immediately preceding such Dividend Payment Date. Any dividend that is not otherwise paid in cash on the applicable Dividend Payment Date (whether due to the Company's election not to pay such dividend in cash, its inability to pay such dividend in cash, or otherwise) shall automatically, and without any action on the part of the Corporation, accrue and compound and be added to the Accrued Value on such Dividend Payment Date.

(b) Additional Dividends. In addition to dividends payable pursuant to Section 3(a) hereof, in the event any dividends are declared or paid or any other distribution is made on or with respect to the Common Stock, the holders of the Series B Preferred Stock as of the record date established by the Board of Directors for such dividend or distribution on the Common Stock shall be entitled to receive as additional dividends (the "Additional Dividends") an amount (whether in the form of cash, securities or other property) equal to the amount (and in

the form) of the dividends or distribution that such holder would have received had the Series B Preferred Stock been converted into Common Stock (without regard to any limitation on conversion contained herein, the availability of authorized and unissued shares for issuance upon conversion, or otherwise) as of the date immediately prior to the record date of such dividend or distribution on the Common Stock; provided, however, that if the Corporation declares and pays a dividend or makes a distribution on the Common Stock consisting in whole or in part of Common Stock or Convertible Securities, then no such dividend or distribution shall be payable in respect of the Series B Preferred Stock on account of the portion of such dividend or distribution on the Common Stock payable in Common Stock or Convertible Securities to the extent that the applicable anti-dilution adjustment under Section 7(b)(i) below shall be made in connection therewith. The record date for any such Additional Dividends shall be the record date for the applicable dividend or distribution on the Common Stock, and any such Additional Dividends shall be payable on the same payment date as the payment date for the dividend on the Common Stock established by the Board of Directors.

(c) Restricted Payments.

(i) Junior Securities. So long as any shares of Series B Preferred Stock remain outstanding, the Corporation shall not, directly or indirectly, make any Junior Securities Distribution unless (A) all accrued and unpaid dividends on the shares of Series B Preferred Stock shall have been paid in cash and (B) sufficient consideration shall have been paid or set apart for the payment of the dividend for the current Dividend Period with respect to the Series B Preferred Stock and the current dividend period with respect to any Parity Securities.

(ii) Parity Securities. So long as any shares of Series B Preferred Stock remain outstanding, the Corporation shall not make any Parity Securities Distribution unless (A) all accrued and unpaid dividends on the shares of Series B Preferred Stock shall have been paid in cash and (B) sufficient consideration shall have been paid or set apart for the payment of the dividend for the current Dividend Period with respect to the Series B Preferred Stock and the current dividend period with respect to any Parity Securities; provided, that, dividends may be declared and paid on Parity Securities if dividends are declared and paid on the Series B Preferred Stock (in accordance with the terms of Section 3(a)) ratably in proportion to the respective aggregate amounts of dividends accumulated and unpaid on such Parity Securities and accumulated and unpaid on the Series B Preferred Stock.

(d) Priority With Respect to Junior Securities. Holders of shares of Series B Preferred Stock shall be entitled to receive the dividends provided for in this Section 3 in preference to and in priority over any dividends upon any Junior Securities.

SECTION 4. REDEMPTION.

The Corporation shall have no right to redeem any shares of Series B Preferred Stock.

SECTION 5. LIQUIDATION, DISSOLUTION OR WINDING UP.

(a) In the event the Corporation shall (i) commence a voluntary case under the Federal bankruptcy laws or any other applicable Federal or state bankruptcy, insolvency or similar law, (ii) consent to the entry of an order for relief in an involuntary case under such law or to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Corporation, or of any substantial part of its property, (iii) make an assignment for the benefit of its creditors, (iv) admit in writing its inability to pay its debts generally as they become due, (v) enter into a transaction which results in a Change of Control of the Corporation, or (vi) otherwise liquidate, dissolve or wind up (any such event, a "Liquidation"), each holder of Series B Preferred Stock shall be entitled to receive out of assets of the Corporation available for distribution to its shareholders, in preference to any distribution to holders of Junior Securities an amount of cash with respect to each share of Series B Preferred Stock held by such holder equal to the Liquidation Preference.

(b) No full preferential payment on account of any Liquidation shall be made to the holders of any class of Parity Securities unless there shall likewise be paid at the same time to the holders of the Series B Preferred Stock the full amounts to which such holders are entitled with respect to such Liquidation. If, upon any Liquidation, after the distribution of the liquidation preferences to Senior Securities, if any, the assets of the Corporation are not sufficient to pay in full the liquidation payments payable to the holders of the outstanding Series B Preferred Stock and outstanding shares of Parity Securities, then the holders of all such shares shall share ratably in such distribution of assets in accordance with the full respective preferential payments that would be payable on such shares of Series B Preferred Stock and such shares of Parity Securities if all amounts payable thereon were payable in full.

(c) After the payment to the holders of shares of the Series B Preferred Stock of the full amount of any liquidating distribution to which they are entitled under this Section 5, the holders of the Series B Preferred Stock as such shall have no right or claim to any of the remaining assets of the Corporation.

SECTION 6. VOTING RIGHTS.

(a) General. Each holder of Series B Preferred Stock shall have full voting rights and powers, and shall be entitled to vote on all matters put to a vote or consent of shareholders of the Corporation, other than matters on which only one or a limited number of specified classes or series of shares (other than the Series B Preferred Stock) or other instruments is entitled by law or these articles of incorporation to vote or consent, with each holder of shares of Series B Preferred Stock having the number of votes equal to the quotient obtained by dividing (x) the sum of (i) the aggregate Stated Value of such shares as of the record date for the vote or consent which is being taken, or if no such record date is established, on the date such vote is taken or any consent of shareholders is solicited plus (ii) an amount equal to the aggregate of all accrued but unpaid dividends (whether or not declared) on such shares as of such date by (y) the Conversion Price as of such date. The holders of the Series B Preferred Stock, the holders of the Series A Preferred Stock, and the holders of Common Stock shall vote together as a single class on all matters submitted to a vote of the shareholders of the Corporation, except in cases where a vote of the holders of the Series B Preferred Stock, voting separately as a class, is

required by law or by this Article V(D). The holders of the Series B Preferred Stock shall vote as part of a single class with the holders of Common Stock, the holders of the Series A Preferred Stock and the holders of other voting stock and instruments of the Corporation, if any, on all matters submitted to a vote of the shareholders of the Corporation, except in cases where a vote of the holders of the Series B Preferred Stock or the holders of only one or more other specified classes or series of shares or other instruments, voting separately as a class, is required by law or by these articles of incorporation. Holders of Series B Preferred Stock shall be entitled to notice of all shareholders meetings in accordance with the procedures set forth in the Corporation's Bylaws.

(b) Voting With Respect to Certain Matters. In addition to any matters requiring a separate vote of the Series B Preferred Stock under applicable law, the Corporation shall not, without the prior consent or approval of the holders of at least 50.01% of the issued and outstanding shares of Series B Preferred Stock, voting as a single class:

(i) amend, alter, repeal, restate, or supplement its Articles of Incorporation, Bylaws or this Article V(D) in a manner that alters or changes, in any adverse manner, the powers, preferences, privileges or rights of the Series B Preferred Stock or which otherwise would adversely affect the rights, privileges or preferences of the Series B Preferred Stock;

(ii) authorize, issue or otherwise create any shares of Senior Securities, Parity Securities, additional shares of Series B Preferred Stock, or any other debt or equity securities of the Corporation that by their terms are convertible into, or exchangeable or exercisable for, shares of Senior Securities, Parity Securities or additional shares of Series B Preferred Stock, or reissue any shares of Series B Preferred Stock which have been reacquired by the Corporation;

(iii) effect any transaction which would result in a Change of Control of the Corporation;

(iv) authorize or otherwise effectuate a reverse stock split of the Series B Preferred Stock;

(v) increase the par value of the Common Stock;

(vi) enter into any agreement, commitment, understanding or other arrangement to take any of the actions in subparagraphs (i) through (v) above; or

(vii) cause or authorize any subsidiary of the Corporation to engage in any of the foregoing actions.

SECTION 7. CONVERSION.

(a) Terms of Conversion. Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time, and from time to time, on the terms and conditions set forth in this Section 7, into a number of fully paid and non-assessable shares of Common Stock equal to the quotient obtained by dividing (x) the sum of (i) the Stated Value

plus (ii) an amount equal to the aggregate of all accrued but unpaid dividends (whether or not declared) on such share calculated through and including the date of such conversion by (y) the Conversion Price in effect on the date of such conversion.

(b) Adjustment of Conversion Price. The Conversion Price shall be subject to adjustment from time to time as follows:

(i) Stock Dividends, Splits, etc. In case the Corporation shall at any time or from time to time after the Issuance Date (A) declare a dividend or make a distribution on the outstanding shares of Common Stock or securities convertible into Common Stock, in either case, in shares of Common Stock or (B) effect a subdivision, combination, consolidation or reclassification of the outstanding shares of Common Stock into a greater or lesser number of shares of Common Stock, then, and in each such case, the Conversion Price in effect immediately prior to such event or the record date therefor, whichever is earlier, shall be adjusted by multiplying such Conversion Price by a fraction of which (x) the numerator is the number of shares of Common Stock that were outstanding immediately prior to such event and (y) the denominator is the number of shares of Common Stock outstanding immediately after such event. An adjustment made pursuant to this Section 7(b)(i) shall become effective (x) in the case of any such dividend or distribution, immediately after the close of business on the date for the determination of holders of shares of Common Stock entitled to receive such dividend or distribution, or (y) in the case of any such subdivision, combination, consolidation or reclassification, at the close of business on the day upon which such corporate action becomes effective.

(ii) Below Market or Conversion Price Issuances. In case the Corporation shall at any time or from time to time after the Issuance Date issue or sell any Common Stock or Convertible Security (collectively, "Additional Shares") without consideration or for a consideration per share (or having a conversion, exchange or exercise price per share) less than the greater of (A) the Closing Price per share of Common Stock on the Business Day immediately preceding the earlier of the issuance, or public announcement of the issuance, of such Additional Shares and (B) the Conversion Price as of the date of such issuance then, and in each such case, the Conversion Price shall be reduced to an amount determined by multiplying the Conversion Price in effect on the day immediately prior to such date by a fraction of which (x) the numerator is the sum of (i) the product of (A) the number of shares of Common Stock outstanding immediately prior to such sale or issuance multiplied by (B) the greater of (1) the then applicable Conversion Price per share and (2) the Closing Price per share of Common Stock on the date preceding the earlier of the issuance or public announcement of the issuance of such Additional Shares (the greater of (1) and (2) above hereinafter referred to as the "Adjustment Price") and (ii) the aggregate consideration receivable by the Corporation for the total number of shares of Common Stock so issued (or into or for which the Convertible Securities are convertible, exercisable or exchangeable), and (y) the denominator equals the product of (i) the sum of (A) the total number of shares of Common Stock outstanding immediately prior to such sale or issue and (B) the number of additional shares of Common Stock issued (or into or for which the Convertible Securities may be converted, exercised or exchanged), multiplied by (ii) the Adjustment Price. An adjustment made pursuant to this subsection (ii) shall be made on the next Business Day following the date on which any such issuance is made and shall be effective retroactively to the close of business on the date of such issuance. Notwithstanding the

foregoing, no adjustment (other than as provided for in Section 7(b)(iv)(5)(D)) shall be made pursuant to this Section 7(b)(ii) in connection with any Excluded Issuances.

(iii) Special Dividends; Repurchases. In case the Corporation after the Issuance Date shall (1) distribute to all holders of shares of Common Stock or other series of capital stock of the Corporation (other than the Series B Preferred Stock) evidences of its indebtedness, assets (excluding any regular periodic cash dividend but including any extraordinary cash dividend), capital stock (other than Common Stock) or rights to subscribe for capital stock (other than Common Stock), or (2) purchase or otherwise acquire for value any shares of Common Stock in an Above Market Repurchase, in each such case the Conversion Price in effect immediately prior to the date of such distribution (or the date immediately prior to the date of the public announcement of such distribution, whichever is earlier) or date of such purchase (or the date immediately prior to the date of the public announcement of such purchase), as applicable, shall be adjusted by multiplying such Conversion Price by a fraction of which (x) the numerator is the remainder (if greater than zero) of (i) the Closing Price per share of Common Stock on such date, minus (ii) the Fair Market Value as of such date of the portion of assets, evidences of indebtedness, capital stock or subscription rights so distributed or paid applicable to one share of Common Stock, and (y) the denominator is the Closing Price per share of Common Stock on such date, such adjustment to become effective immediately prior to the opening of business on the day following the date of distribution or purchase; provided, however, that no adjustment shall be made pursuant to clause (1) of this subparagraph (b)(iii) (A) to the extent each holder of Series B Preferred Stock receives such evidences of indebtedness, assets, capital stock or rights to subscribe for capital stock, as applicable, as Additional Dividends in accordance with the terms of Section 3(b), (B) if such issuance is an Excluded Issuance or (C) if an adjustment shall otherwise be made with respect to such distribution or issuance pursuant to Section 7(b)(ii); and further provided, however, that if in any case the numerator of such fraction shall be zero or less than zero, no adjustment shall be made in such case. The Corporation shall provide any holder of Series B Preferred Stock, upon receipt of a written request therefor, with any indenture or other instrument defining the rights of the holders of any indebtedness, assets, subscription rights or capital stock referred to in this subparagraph (b)(iii).

(iv) General. For the purposes of any adjustment of the Conversion Price pursuant to paragraph (ii) of this Section 7(b), the following provisions shall be applicable:

(1) In the case of the issuance of Common Stock or Convertible Securities for cash in a public offering or private placement, the aggregate consideration shall be deemed to be the amount of cash paid before deducting any discounts, commissions or placement fees payable by the Corporation to any underwriter or placement agent in connection with the issuance and sale thereof.

(2) In the case of the issuance of Common Stock for a consideration in whole or in part other than cash, such consideration shall be deemed to be the Fair Market Value thereof.

(3) Subparagraph (2) above notwithstanding, in the case of the issuance of Additional Shares to the owners of the non-surviving entity in connection with any merger in which the Corporation is the surviving corporation, the amount of

consideration therefore shall be deemed to be the Fair Market Value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock or Convertible Securities, as the case may be.

(4) If Common Stock is sold as a unit with other securities, the aggregate consideration received for such Common Stock shall be deemed to be net of the Fair Market Value of such other securities.

(5) In the case of the issuance of Convertible Securities:

(A) The aggregate maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent reduction of such number) deliverable upon conversion of or in exchange for, or upon the exercise of, such Convertible Securities and subsequent conversion, exchange or exercise thereof shall be deemed to have been issued at the time such Convertible Securities were issued and for a consideration equal to the consideration received by the Corporation for any such Convertible Securities, plus the minimum amount of consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent increase of consideration), if any, to be received by the Corporation upon the conversion, exercise or exchange of such Convertible Securities;

(B) With respect to any Convertible Securities issued after the Issuance Date for which an adjustment to the Conversion Price previously has been made pursuant to Section 7(b)(i), on any increase in the number of shares of Common Stock deliverable upon exercise, conversion or exchange of, or a decrease in the exercise price of, such Convertible Securities, the applicable Conversion Price shall forthwith be readjusted retroactively to give effect to such increase or decrease;

(C) With respect to any Convertible Securities issued after the Issuance Date for which an adjustment to the Conversion Price has previously not been made pursuant to Section 7(b)(i), if there is any increase in the number of shares of Common Stock deliverable upon exercise, conversion or exchange of, or a decrease in the exercise price of, such Convertible Securities, such Convertible Securities shall be treated as if they had been cancelled and reissued and an adjustment to the Conversion Price with respect to such deemed issuance shall be made pursuant to Section 7(b)(i), if applicable;

(D) With respect to any Convertible Securities issued prior to the Issuance Date, if there is any increase in the number of shares of Common Stock deliverable upon exercise, conversion or exchange of, or a decrease in the exercise price of, such Convertible Securities other than a change resulting from the anti-dilution provisions thereof, such Convertible Securities shall be treated as if they had been cancelled and reissued and an adjustment to the Conversion Price with respect to such deemed issuance shall be made pursuant to Section 7(b)(i), if applicable; and

(E) No further adjustment of the Conversion Price adjusted upon the issuance of any such Convertible Securities shall be made as a result of

the actual issuance of Common Stock upon the exercise, conversion or exchange of any such Convertible Securities.

(v) Rights Distributions. Rights or warrants issued by the Corporation to all holders of Common Stock entitling the holders thereof to subscribe for or purchase capital stock of the Corporation, which rights or warrants (1) are deemed to be transferred with such shares of Common Stock, (2) are not exercisable and (3) are also issued in respect of future issuances of Common Stock, including shares of Common Stock issued upon conversion of shares of Series B Preferred Stock, in each case in clauses (1) through (3) until the occurrence of a specified event, shall for purposes of subparagraphs (b)(ii) and (b)(iii) not be deemed issued until the occurrence of the earliest such specified event.

(vi) Calculations. All calculations of the Conversion Price shall be made to the nearest five decimal places. Anything in Section 7(b) to the contrary notwithstanding, in no event shall the then current Conversion Price be increased as a result of any calculation made at any time pursuant to Sections 7(b)(ii) through 7(b)(iv). No adjustment to the Conversion Price pursuant to paragraph 7(b) shall be required unless such adjustment would require an increase or decrease of at least 1% in the Conversion Price; provided, however, that any adjustments which by reason of this paragraph 7(b)(vii) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. Notwithstanding any other provision of this Section 7(b), no adjustment to the Conversion Price shall reduce the Conversion Price below \$0.01, and any such purported adjustment shall instead reduce the Conversion Price to \$0.01.

(vii) Outstanding Shares. The number of shares of Common Stock at any time outstanding shall include all shares of Common Stock outstanding at such time and any shares of Common Stock issuable upon conversion of or in exchange for any convertible or exchangeable security or upon the exercise of any option. The number of shares of Common Stock at any time outstanding shall not include any shares of Common Stock then owned or held by or for the account of the Corporation or any Subsidiary, and the disposition of any shares so owned or held shall be considered an issue or sale of Common Stock.

(viii) Successive Adjustments. Successive adjustments in the Conversion Price shall be made, without duplication, whenever any event specified in Sections 7(b)(i) through 7(b)(iii) shall occur.

(c) Reorganization, Consolidation, Merger, Asset Sale.

(i) In case of any capital reorganization or reclassification of outstanding shares of Common Stock (other than a reclassification covered by Section 7(b)), or in case of any consolidation or merger of the Corporation with or into another Person, or in case of any sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation) of all or substantially all of the Corporation's assets, on a consolidated basis, in one transaction or a series of related transactions, to any Person (including any group that is deemed to be a Person) not otherwise constituting a Liquidation in accordance with Section 5 (each of the foregoing being referred to as a "Transaction"), in each case which is effected in such a manner that the holders of Common Stock are entitled to receive (either directly or upon

subsequent liquidation) stock or other securities or property (including cash) with respect to or in exchange for Common Stock, shares of Series B Preferred Stock then outstanding shall thereafter be convertible into, in lieu of the Common Stock issuable upon such conversion prior to the consummation of such Transaction, the kind and amount of shares of stock and other securities and property (including cash) receivable upon the consummation of such Transaction by a holder of that number of shares of Common Stock into which one share of Series B Preferred Stock was convertible (without regard to any limitation on conversion contained herein, the availability of authorized and unissued shares for issuance upon conversion, or otherwise) immediately prior to the consummation of such Transaction. In any such case, the Corporation or the person formed by the consolidation or resulting from the merger or which acquires such assets or which acquires the Corporation's shares, as the case may be, shall make or cause to be made appropriate provisions (as determined in good faith by the Board of Directors) in the applicable agreement of merger or consolidation, its certificate or articles of incorporation or other constituent documents to ensure that the provisions of Sections 2-3, 4(b)-(f) and 5-7 herein will continue to be applicable to the Series B Preferred Stock or any such other shares of stock and other securities (other than Common Stock) and property deliverable upon conversion of the shares of Series B Preferred Stock remaining outstanding following the Transaction. In case securities or property other than Common Stock shall be issuable or deliverable upon conversion as aforesaid, then all references in this Section 7 shall be deemed to apply, so far as appropriate and as nearly as may be, to such other securities or property. The provisions of this Section 7(c) shall similarly apply to successive Transactions. The Corporation shall give written notice to the holders of Series B Preferred Stock at least 30 days prior to the date on which any Transaction or Change of Control or similar transaction affecting the Corporation shall take place.

(ii) Notwithstanding anything contained herein to the contrary, the Corporation will not effect any Transaction unless, prior to the consummation thereof, the Surviving Person, if other than the Corporation, shall mail, by first-class mail, postage prepaid, to each record holder of shares of Series B Preferred Stock, at such holder's address as it appears on the transfer books of the Corporation, (A) a written instrument assuming the obligation to deliver to such holder such cash, property and securities to which, in accordance with the foregoing provisions, such holder is entitled, and (B) an opinion of outside counsel for such Surviving Person stating that such assumption agreement is a valid, binding and enforceable agreement of the Surviving Person.

(iii) Nothing contained in this Section 7(c) shall limit the rights of holders of the Series B Preferred Stock to convert the Series B Preferred Stock or to vote their shares of Series B Preferred Stock in connection with a Transaction.

(d) Reports. Whenever the number of shares of Common Stock into which each share of Series B Preferred Stock is convertible is adjusted as provided in this Section 7, the Corporation shall promptly mail to the holders of record of the outstanding shares of Series B Preferred Stock, at their respective addresses as the same shall appear in the Corporation's transfer books, a certificate signed by an executive officer stating that the number of shares of Common Stock into which the shares of Series B Preferred Stock are convertible has been adjusted (setting forth in reasonable detail and certifying the calculation of such adjustment), the new number of shares of Common Stock (or describing the new stock, securities, cash or other property) into which each share of Series B Preferred Stock is convertible as a result of such

adjustment, a brief statement of the facts requiring such adjustment and when such adjustment became effective. The Corporation shall give the holders of Series B Preferred Stock written notice at least 20 days prior to the date on which the Corporation closes its books or takes a record (i) with respect to any dividend or distribution upon Common Stock, (ii) with respect to any pro rata subscription offer to holders of Common Stock or (iii) for determining rights to vote with respect to any Transaction.

(e) Conversion Procedures.

(i) The holder of any shares of Series B Preferred Stock may exercise its right to convert any or all such outstanding shares into shares of Common Stock at any time by surrendering for such purpose to the Corporation, at its principal office or at such other office or agency maintained by the Corporation for that purpose, a certificate or certificates representing the shares of Series B Preferred Stock to be converted, duly endorsed to the Corporation in blank, accompanied by a written notice stating that such holder elects to convert all or a specified whole number of such shares in accordance with the provisions of this Section 7. The Corporation will pay any and all documentary, stamp or similar issue or transfer tax that may be payable in respect of any issue or delivery of shares of Common Stock to the holder on conversion of the Series B Preferred Stock pursuant hereto.

(ii) As promptly as practicable, and in any event within three Business Days after the surrender of such certificate or certificates and the receipt of such notice relating thereto and, if applicable, payment of all transfer taxes (or the demonstration to the reasonable satisfaction of the Corporation that such taxes are inapplicable), the Corporation shall deliver or cause to be delivered (i) certificates (which shall bear legends, if appropriate) registered in the name of such holder representing the number of full shares of Common Stock to which the holder of shares of Series B Preferred Stock so converted shall be entitled, provided that, if the Corporation's transfer agent is participating in the Depository Trust Company ("DTC") Fast Automated Securities Transfer program, and so long as the certificates therefore do not bear a legend (pursuant to the terms of the Subscription Agreement) and the holder thereof is not then required to return such certificate for the placement of a legend thereon (pursuant to the terms of the Subscription Agreement), the Corporation shall cause its transfer agent to promptly electronically transmit the Common Stock issuable upon conversion to the holder by crediting the account of the holder or its nominee with DTC through its Deposit Withdrawal Agent Commission system, (ii) if less than the full number of shares of Series B Preferred Stock evidenced by the surrendered certificate or certificates are being converted, a new certificate or certificates for the number of shares evidenced by such surrendered certificate or certificates less the number of shares converted and (iii) payment of all amounts to which a holder is entitled pursuant to Section 7(f) hereof. All shares of Common Stock issuable upon conversion of the Series B Preferred Stock will be made without charge to the holders of Series B Preferred Stock and upon issuance will be fully paid and non-assessable, free and clear of all taxes, liens, charges and encumbrances with respect to the issuance thereof. Such conversion shall be deemed to have been made at the close of business on the date of receipt of such notice and of such surrender of the certificate or certificates representing the shares of Series B Preferred Stock to be converted so that the rights of the holder thereof as to the shares being converted shall cease except for the right to receive shares of Common Stock and any payment of amounts due pursuant to Section 7(f), and the person entitled to receive the shares of Common Stock shall be treated for all

purposes as having become the record holder of such shares of Common Stock at such time. Any shares of Common Stock so delivered on or following the date on which such shares of Common Stock have been registered under the Securities Act pursuant to the Subscription Agreement and continue to be subject to resale under a then-effective registration statement, or otherwise may be sold by the holder pursuant to Rule 144 promulgated under the Securities Act, shall not bear any restrictive legend.

(iii) If a conversion of Series B Preferred Stock is to be made in connection with a Transaction or Change of Control or a similar transaction affecting the Corporation (other than a tender or exchange offer), the conversion of any shares of Series B Preferred Stock may, at the election of the holder thereof, be conditioned upon the consummation of such transaction, in which case such conversion shall not be deemed to be effective until such transaction has been consummated. In connection with any tender or exchange offer for shares of Common Stock, holders of Series B Preferred Stock shall have the right to tender (or submit for exchange) shares of Series B Preferred Stock in such a manner so as to preserve the status of such shares as Series B Preferred Stock until immediately prior to such time as shares of Common Stock are to be purchased (or exchanged) pursuant to such offer, at which time that portion of the shares of Series B Preferred Stock so tendered which is convertible into the number of shares of Common Stock to be purchased (or exchanged) pursuant to such offer shall be deemed converted into the appropriate number of shares of Common Stock. Any shares of Series B Preferred Stock not so converted shall be returned to the holder as Series B Preferred Stock.

(iv) The Corporation shall not close its books against the transfer of Series B Preferred Stock or of Common Stock issued or issuable upon conversion of Series B Preferred Stock in any manner which unreasonably interferes with the timely conversion of Series B Preferred Stock.

(f) Fractional Shares. In connection with the conversion of any shares of Series B Preferred Stock pursuant to this Section 7, no fractions of shares of Common Stock shall be issued, but in lieu thereof the Corporation shall pay a cash adjustment in respect of such fractional interest in an amount equal to such fractional interest multiplied by the Closing Price per share of Common Stock on the day on which such shares of Series B Preferred Stock are deemed to have been converted. If more than one share of Series B Preferred Stock shall be surrendered for conversion at one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the total number of shares of Series B Preferred Stock so surrendered.

(g) Reservation of Shares. The Corporation shall at all times reserve and keep available, free from liens, charges and security interests and not subject to any preemptive rights, solely for issuance upon conversion of the Series B Preferred Stock, the number of shares of Common Stock from time to time issuable upon conversion of all shares of the Series B Preferred Stock at the time outstanding and to ensure that the shares of Common Stock may be issued without violation of any applicable law or regulation or of any requirement of any securities exchange or inter-dealer quotation system on which the shares of Common Stock may be listed or traded.

(h) Certain Events. If an event not specifically provided for in this Section 7 occurs which would have an inequitable or dilutive effect on the relative percentage ownership interests of the holders of Series B Preferred Stock as those specifically provided for in this Section 7, then the Board of Directors shall make an appropriate adjustment in the Conversion Price so as to protect the rights of the holders of Series B Preferred Stock.

(i) Conversion Disputes. In the case of any dispute with respect to a conversion, the Corporation shall promptly issue such number of shares of Common Stock as are not disputed in accordance with Section 7(e)(ii) above. If such dispute involves the calculation of the Conversion Price, and such dispute is not promptly resolved by discussion between the relevant holder and the Corporation, the Corporation shall submit the disputed calculations to an independent outside accountant via facsimile within three business days of receipt of the written notice of conversion. The accountant, at the Corporation's sole expense, shall promptly audit the calculations and notify the Corporation and the holder of the results no later than three business days from the date it receives the disputed calculations. The accountant's calculation shall be deemed conclusive, absent manifest error. The Corporation shall then issue the appropriate number of shares of Common Stock in accordance with this Section 7.

(j) Conversion on the Option of the Corporation.

(i) Provided the Corporation has a sufficient number of shares of Common Stock duly authorized and reserved for issuance upon conversion of all of the outstanding shares of Series B Preferred Stock, upon delivery of written notice of conversion by the Corporation to the holders of Series B Preferred Stock within 15 days after the occurrence of any Conversion Trigger Date, which notice shall specify the applicable Conversion Trigger Date, all (and not less than all) of the then outstanding shares of Series B Preferred Stock shall be immediately and automatically converted into fully paid and non-assessable shares of Common Stock effective as of the date specified in such notice not more than 30 days from the specified Conversion Trigger Date. The number of shares of Common Stock to which a holder of a share of Series B Preferred Stock shall be entitled upon such conversion shall be determined by dividing (x) the sum of (i) the Stated Value plus (ii) an amount equal to the aggregate of all accrued but unpaid dividends (whether or not declared) on such share as of the close of business on the Business Day immediately preceding the specified Conversion Trigger Date by (y) the Conversion Price in effect at the close of business on the Business Day immediately preceding the specified Conversion Trigger Date.

(ii) Mechanics. Any conversion pursuant to this Section 7(j) shall occur automatically and without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent. Upon the occurrence of such automatic conversion of the Series B Preferred Stock, the holders of the Series B Preferred Stock shall, a reasonable time thereafter, surrender the certificates representing such shares (converted pursuant to this Section 7(j)) at the office of the Corporation or any transfer agent for the Series B Preferred Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on the Corporation's stock records, a certificate or certificates for the number of shares of Common Stock into which such shares of Series B Preferred Stock surrendered were convertible on the date as of which such automatic conversion occurred. All certificates evidencing shares of

Series B Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the date of such conversion, be deemed to have been retired and cancelled and the shares of Series B Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates.

SECTION 8. REACQUIRED SHARES.

Any shares of Series B Preferred Stock converted, purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof.

SECTION 9. NO PREEMPTIVE RIGHTS.

Holders of Series B Preferred Stock shall not have any preemptive right pursuant to this Article V(D) to subscribe to any additional issue of stock or to any security convertible into such stock. Nothing herein shall limit the power of the Corporation to grant any of the foregoing rights to persons by contract or otherwise or the power of any person, including, without limitation, the holders of Series B Preferred Stock, to exercise any of the foregoing rights granted to them by contract or otherwise.

SECTION 10. GENERAL PROVISIONS.

(a) Headings. The headings of the sections, paragraphs, subparagraphs, clauses and subclauses of this Article V(D) are for convenience of reference only and shall not define, limit or affect any of the provisions hereof.

(b) Waivers. In the event that the holders of at least 50.01% of the issued and outstanding shares of Series B Preferred Stock, voting as a single class shall consent to waive compliance by the Corporation with any provision of, or a breach by the Corporation of any provision of, this Article V(D), all holders of outstanding shares of Series B Preferred Stock shall be bound by such waiver.

SECTION 11. DEFINITIONS.

For the purposes of this Article V(D):

“Above Market Repurchase” shall mean any purchase (by tender or exchange offer, open market purchase, privately negotiated purchase or otherwise) of all or any portion of the Corporation’s Common Stock where such purchase is for aggregate consideration having a Fair Market Value as of the earlier of (i) the date of such purchase or (ii) the date immediately prior to the date of the public announcement of such purchase, that exceeds the product of (x) the aggregate number of shares being purchased, multiplied by (y) the Closing Price of the Common Stock on such date.

“Accrued Value” means, with respect to a share of Series B Preferred Stock, as at any date, the sum of (as adjusted for any split, subdivision, combination, consolidation,

recapitalization or similar event with respect to the Series B Preferred Stock) (i) the Stated Value plus (ii) an amount equal to the aggregate of all accrued but unpaid dividends (whether or not declared) on such share through and including such date which have been added to Accrued Value pursuant to Section 3(a) (ii).

“Additional Dividends” has the meaning set forth in Section 3(b) above.

“Additional Shares” has the meaning set forth in Section 7(b)(ii) above.

“Adjustment Price” has the meaning set forth in Section 7(b)(ii) above.

“Affiliate” shall have the meaning set forth in Rule 12b-2 promulgated by the Securities and Exchange Commission under the Exchange Act.

“Available Shares” shall have the meaning ascribed thereto in the Subscription Agreements.

“Business Day” means any day other than a Saturday, Sunday, or a day on which commercial banks in the City of New York are authorized or obligated by law or executive order to close.

“Change of Control” means (i) any sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation) of all or substantially all of the Corporation’s assets, on a consolidated basis, in one transaction or a series of related transactions, to any Person (including any group that is deemed to be a Person) other than the Initial Purchasers or their respective Affiliates; (ii) any Person (including any group that is deemed to be a Person) other than the Initial Purchasers or any of their respective Affiliates, is or becomes the “beneficial owner” (within the meaning of Rule 13d-3 promulgated under the Exchange Act) directly or indirectly, of more than 50% of the combined voting power of the Voting Securities of the Corporation (or the surviving entity or entities of a transaction or a series of related transactions if other than the Corporation); (iii) the Continuing Directors cease for any reason to constitute a majority of the members of the Board of Directors then in office; (iv) a merger or consolidation of the Corporation with any other Person, other than a merger or consolidation resulting in the Voting Securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the Voting Securities of the Corporation or such surviving entity outstanding immediately after such merger or consolidation; or (v) the Corporation adopts, voluntarily or involuntarily, a plan of liquidation or dissolution.

“Closing Price” per share of Common Stock on any date shall be the closing sale price on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Common Stock or such other securities are listed or admitted to trading or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the last quoted sale price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated

Quotation System or such other system then in use, or, if on any such date the Common Stock or such other securities are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker, selected by the Board of Directors and reasonably acceptable to the holders of a majority of the outstanding shares of Series B Preferred Stock, making a market in the Common Stock or such other securities of the Corporation.

“Common Stock” means the common stock, no par value per share, of the Corporation.

“Continuing Directors” means the individuals who are members of the Corporation’s Board of Directors as of the Issuance Date; provided, however, that if the election, or nomination for election by the Corporation’s shareholders, of any new director was approved by a vote of at least a majority of the Continuing Directors, such new director shall be considered a “Continuing Director”.

“Conversion Price” means the Initial Conversion Price, subject to adjustment as provided in Section 7(b).

“Conversion Trigger Date” shall mean any date after August 23, 2005 as to which the Closing Price per share of Common Stock for at least 20 consecutive Trading Days immediately preceding such date, including the last Trading Day of such period, is greater than or equal to \$5.00 per share (as adjusted for any split, subdivision, combination, consolidation, recapitalization or similar event with respect to the Common Stock).

“Convertible Securities” shall mean any options or warrants to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock, or options or warrants to purchase or rights to subscribe for such convertible or exchangeable securities.

“Dividend Payment Date” means each of March 31, June 30, September 30 and December 31, except that if such date is not a Business Day then the Dividend Payment Date shall be the next day that is a Business Day.

“Dividend Period” means the Initial Dividend Period and, thereafter, each quarterly period from and including a Dividend Payment Date to the next following Dividend Payment Date (but without including such later Dividend Payment Date).

“Dividend Rate” has the meaning set forth in Section 3(a)(i).

“Exchange Act” means the Securities Exchange Act of 1934, as amended and the rules and regulations promulgated thereunder.

“Excluded Issuances” means the issuance or reissuance of any shares of Common Stock or Convertible Securities (whether treasury shares or newly issued shares) pursuant to or in connection with (1) a dividend or distribution on, or subdivision, combination, consolidation or reclassification of, the outstanding shares of Common Stock requiring an adjustment in the Conversion Price pursuant to Section 7(b)(i), (2) any Convertible Security outstanding as of the Issuance Date (except as otherwise provided in Section 7(b)(iv)(5)(D)), including, without limitation, warrants originally issued to holders of Series B Preferred Stock pursuant to the

Subscription Agreements, (3) the conversion of shares of Series B Preferred Stock, (4) the grant or exercise of any stock or stock options to employees, directors or consultants of the Corporation that may be granted to or exercised by any employee, director or consultant under any stock option or similar benefit plan of the Corporation now existing or to be implemented in the future, (5) any transaction involving the Corporation's issuance of securities in connection with an acquisition (the primary purpose of which is not to raise equity capital), (6) any transaction involving the Corporation's issuance of securities in connection with any strategic partnership or joint venture (the primary purpose of which is not to raise equity capital), (7) any issuance of securities by the Corporation as consideration for the acquisition of a license by the Corporation, (8) the issuance of securities pursuant to any financing from a bank or similar financial or lending institution approved by the Board of Directors, or (9) the issuance of any Replacement Common Stock; provided, however, that issuances of securities described in the forgoing sub-clauses (4), (6), (7) and (8) subsequent to the Issuance Date which exceed, in the aggregate, 10% of the outstanding Common Stock of the Corporation outstanding as of the Issuance Date (as adjusted for any split, subdivision, combination, consolidation, recapitalization or similar event with respect to the Common Stock), as determined on a fully-diluted basis, shall not be deemed to be Excluded Issuances.

"Fair Market Value" with respect to any securities, assets or property shall mean the fair value thereof as determined by an independent investment banking or appraisal firm experienced in the valuation of such securities or property selected in good faith by the Board of Directors and acceptable to the holders of a majority of the outstanding shares of Series B Preferred Stock; provided, that, the value of any securities that trade on a national securities exchange or inter-dealer quotation system shall be the Closing Price thereof as of the date such value is determined.

"Initial Conversion Price" means \$2.70.

"Initial Dividend Period" means the dividend period commencing on the Issuance Date and ending on (and including) the date immediately prior to the first Dividend Payment Date to occur thereafter.

"Initial Purchasers" means the initial Purchasers of the Series B Preferred Stock pursuant to the Subscription Agreements.

"Issuance Date" means with respect to any share of Series B Preferred Stock, the date on which the Corporation initially issues such share of Series B Preferred Stock, regardless of the number of times transfer of such share is made on the stock records of the Corporation and regardless of the number of certificates which may be issued to evidence such share.

"Junior Securities" shall mean the Corporation's Common Stock and all classes and series of capital stock of the Corporation now or hereafter authorized, issued or outstanding which by their terms expressly provide that they are junior to the Series B Preferred Stock, or which do not specify their rank, with respect to payment of dividends and the distribution of assets upon liquidation, winding up or dissolution. This definition of Junior Securities shall include, without limitation, any Convertible Securities exercisable or exchangeable for or convertible into any Junior Securities.

“Junior Securities Distribution” means the declaration or payment on account of, or setting apart for payment money for a sinking or other similar fund for, the purchase, redemption or other retirement of, any Junior Securities or any Convertible Securities exercisable or exchangeable for or convertible into any shares of Junior Securities, or any distribution in respect thereof (except for (i) dividends on Junior Securities which are payable solely in additional shares of Junior Securities, or by the increase in the liquidation value of Junior Securities, in each case, as required by the terms of such Junior Securities, or (ii) cashless exercises of options), either directly or indirectly, and whether in cash, obligations, Common Stock, Convertible Securities or other property, or the purchase or redemption by any corporation or other entity directly or indirectly controlled by the Corporation of any of the Junior Securities or any Convertible Securities exercisable or exchangeable for or convertible into any Junior Securities.

“Liquidation” has the meaning set forth in Section 5(a) above.

“Liquidation Preference” means the greater of (x) the sum of (i) the Stated Value plus (ii) an amount equal to the aggregate of all accrued but unpaid dividends (whether or not declared) on such share and (y) the amount that would be payable to such holder in the Liquidation in respect of Common Stock issuable upon conversion of such share of Series B Preferred Stock if all outstanding shares of Series B Preferred Stock were converted into Common Stock immediately prior to the Liquidation in accordance with Section 7 hereof.

“Parity Securities” means the Series A Preferred Stock and each class or series of capital stock issued by the Corporation after the date hereof the terms of which specifically provide that such class or series will rank on a parity with the Series B Preferred Stock with respect to payment of dividends and the distribution of assets upon liquidation, winding up or dissolution. This definition of Parity Securities shall include, without limitation, any Convertible Securities exercisable or exchangeable for or convertible into any Parity Securities.

“Parity Securities Distribution” means the declaration or payment on account of, or setting apart for payment money for a sinking or other similar fund for, the purchase, redemption or other retirement of (other than by conversion into or exchange for Junior Securities), any Parity Securities or any Convertible Securities exercisable or exchangeable for or convertible into any shares of Parity Securities, or any distribution in respect thereof (except for (i) dividends on Parity Securities which are payable solely in additional shares of Parity Securities, or by the increase in the liquidation value of Parity Securities, in each case, as required by the terms of such Parity Securities or (ii) cashless exercises of options), either directly or indirectly, and whether in cash, obligations, Common Stock, Convertible Securities or other property, or the purchase or redemption by any corporation or other entity directly or indirectly controlled by the Corporation of any of the Parity Securities or any Convertible Securities exercisable or exchangeable for or convertible into any Parity Securities.

“Person” means an individual, corporation, limited liability company or partnership, unincorporated organization, trust or joint venture, or a governmental agency or political subdivision thereof, or other entity of any kind.

“Senior Securities” means each class or series of capital stock issued by the Corporation after the date hereof the terms of which specifically provide that such class or series will rank

senior to the Series B Preferred Stock with respect to payment of dividends and the distribution of assets upon liquidation, winding up or dissolution. This definition of Senior Securities shall include, without limitation, any Convertible Securities exercisable or exchangeable for or convertible into any Senior Securities.

“Series A Preferred Stock” means the Corporation’s Series A 6.0% Participating Convertible Preferred Stock.

“Series B Preferred Stock” has the meaning set forth in Section 1 above.

“Stated Value” means, with respect to a share of Series B Preferred Stock, \$100 (as adjusted for any split, subdivision, combination, consolidation, recapitalization or similar event with respect to the Series B Preferred Stock).

“Subscription Agreements” means the Subscription Agreements for the purchase of Series B Preferred Stock executed by each of the Initial Purchasers on or before August 23, 2004, by and among the Company and the respective Initial Purchasers described therein.

“Subsidiary” of any Person means any corporation or other entity of which a majority of the voting power of the voting equity securities or equity interest is owned, directly or indirectly, by such Person.

“Surviving Person” means the continuing or surviving Person of a merger, consolidation or other corporate combination, the Person receiving a transfer of all or a substantial part of the properties and assets of the Corporation, or the Person consolidating with or merging into the Corporation in a merger, consolidation or other corporate combination in which the Corporation is the continuing or surviving Person, but in connection with which the Series B Preferred Stock or Common Stock of the Corporation is exchanged, converted or reinstated into the securities of any other Person or cash or any other property; provided, however, if such Surviving Person is a direct or indirect Subsidiary of a Person, the parent entity shall be deemed to be a Surviving Person.

“Trading Day” means a day on which the principal national securities exchange on which the Common Stock is quoted, listed or admitted to trading is open for the transaction of business or, if the Common Stock is not quoted, listed or admitted to trading on any national securities exchange (or the Nasdaq Stock Market), any Business Day.

“Transaction” has the meaning set forth in Section 7(c) above.

“Voting Securities” mean the Common Stock, the Series A Preferred Stock, the Series B Preferred Stock and any other securities of the Corporation having the voting power under ordinary circumstances with respect to the election of directors of the Corporation.

These Articles of Amendment are executed as of the __ day of August, 2004.

AKORN, INC.

By: _____
Arthur S. Przybyl, President
and CEO

ACKNOWLEDGMENT

STATE OF ILLINOIS

COUNTY OF MACON

BEFORE ME, the undersigned authority, personally came and appeared Arthur S. Przybyl, to me known to be the person who signed the foregoing instrument as President and CEO of Akorn, Inc. and who acknowledged and declared, in the presence of the two witnesses whose names are subscribed below, that he signed such instrument as his free act and deed in the capacity and for the purposes mentioned therein.

IN WITNESS WHEREOF, each of the undersigned has herewith affixed his or her hand on this __ day of August, 2004, in the aforesaid county and state.

WITNESSES:

Arthur S. Przybyl

Notary Public

EXHIBIT B
SUBSCRIPTION AGREEMENT

SUBSCRIPTION AGREEMENT

SUBSCRIPTION AGREEMENT (this "Agreement") made as of the date set forth on the signature page hereof between Akom, Inc., a Louisiana corporation (the "Company"), and the undersigned (the "Subscriber").

WITNESSETH:

WHEREAS, the Company is offering in a private placement to accredited investors (the "Offering") of up to an aggregate of (i) 170,000 shares of its Series B 6% Participating Convertible Preferred Stock (the "Series B Preferred Stock") at a price equal to \$100.00 per share (the "Offering Price"), and (ii) warrants to purchase shares of common stock of the Company ("Common Stock") equal to thirty percent (30%) of the total number of shares of Common Stock into which the Series B Preferred Stock is convertible, at an exercise price per share equal to \$3.50 (the "Warrants"). The Warrants are issued for a five (5) year period. The shares of Series B Preferred Stock and Warrants offered hereby are sometimes referred to as the "Securities" and all Securities, all shares of Common Stock issued or issuable upon conversion or exercise of such Securities, as the case may be, and all shares of Replacement Common Stock (defined below) are collectively referred to herein as the "Purchased Securities"; and

WHEREAS, the Subscriber desires to purchase that number of Securities set forth on the signature page hereof on the terms and conditions hereinafter set forth; and

WHEREAS, the Company has engaged Leerink Swann & Company (the "Placement Agent") as placement agent for the Offering on a "best-efforts" basis.

NOW, THEREFORE, in consideration of the premises and the mutual representations and covenants hereinafter set forth, the parties hereto agree as follows:

I. SUBSCRIPTION FOR SECURITIES AND REPRESENTATIONS BY SUBSCRIBER

1.1 Subject to the terms and conditions hereinafter set forth, the Subscriber hereby irrevocably subscribes for and agrees to purchase from the Company such Securities as is set forth, and at the purchase price set forth, upon the signature page hereof and the Company agrees to sell such Securities to the Subscriber for said purchase price. The purchase price is payable by wire transfer of immediately available funds contemporaneously with the execution and delivery of this Agreement by the Subscriber. All wires should be sent to:

JP Morgan Chase
55 Water Street
New York, NY 10041
ABA# 021 000 021
Account#: 323 059945
Attn: Henry Reinhold

Certificates for the shares of Series B Preferred Stock and the Warrants will be delivered by the Company to the Subscriber promptly following the Closing (as herein defined).

1.2 The Subscriber recognizes that the purchase of Securities involves a high degree of risk in that (i) the Company will require funds in addition to the proceeds of the Offering; (ii) an investment in the Company is highly speculative and only investors who can afford the loss of their entire investment should consider investing in the Company; (iii) the Subscriber may not be able to liquidate its investment; (iv) transferability of the Securities is extremely limited; and (v) in the event of a disposition, the Subscriber could sustain the loss of its entire investment.

1.3 The Subscriber represents that the Subscriber is an “accredited investor” as such term is defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended (the “Act”), as indicated by the responses to the questions contained in Section VII hereof, and that the Subscriber is able to bear the economic risk and illiquidity of an investment in the Securities.

1.4 The Subscriber hereby acknowledges and represents that (i) the Subscriber has prior investment experience, including investment in non-listed and unregistered securities, or that the Subscriber has employed the services of an investment advisor, attorney and/or accountant to read all of the documents furnished or made available by the Company both to the Subscriber and to all other prospective investors to evaluate the merits and risks of such an investment on the Subscriber’s behalf; (ii) the Subscriber recognizes the highly speculative nature of an investment in the Securities; and (iii) the Subscriber is able to bear the economic risk and illiquidity which the Subscriber assumes by investing in the Securities.

1.5 The Subscriber (i) hereby represents that the Subscriber has been furnished by the Company during the course of this transaction with and has carefully read the Company’s SEC Filings (as hereafter defined), including without limitation the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2003, the additional risk factors specific to the Securities, the Common Stock, and the Offering contained in Schedule 1.5 hereto (together with the SEC Filings, the “Offering Documents”), and all other information regarding the Company which the Subscriber has requested or desired to know; (ii) has been afforded the opportunity to ask questions of and receive answers from duly authorized officers or other representatives of the Company concerning the terms and conditions of the Offering; and (iii) has received any additional information which the Subscriber has requested.

1.6 (a) To the extent necessary, the Subscriber has retained, at its own expense, and relied upon the advice of appropriate professionals regarding the investment, tax and legal merits and consequences of this Agreement and its purchase of the Securities hereunder.

(b) The Subscriber represents that (i) the Subscriber was contacted regarding the sale of the Securities by the Placement Agent (or an authorized agent or representative thereof) with whom the Subscriber had a prior substantial pre-existing relationship and (ii) no Securities were offered or sold to it by means of any form of general solicitation or general advertising, and in connection therewith the Subscriber did not (A) receive or review any advertisement, article, notice or other communication published in a newspaper or magazine or similar media or broadcast over television or radio, whether closed circuit or generally available;

or (B) attend any seminar, meeting or industry investor conference whose attendees were invited by any general solicitation or general advertising.

1.7 The Subscriber hereby acknowledges that the Offering has not been reviewed by the United States Securities and Exchange Commission (the "SEC") because of the Company's representations that this Offering is intended to be exempt from the registration requirements of Section 5 of the Act pursuant to Sections 3(b), 4(2) and/or 4(6) thereof and Regulation D promulgated under the Act. The Subscriber agrees that the Subscriber will not, directly or indirectly, offer, sell, pledge, transfer or otherwise dispose of (or solicit any offers to buy, purchase or otherwise acquire or take a pledge of) any of the Securities, except in compliance with the Act and the rules and regulations promulgated thereunder.

1.8 The Subscriber understands that none of the Securities have been registered under the Act by reason of a claimed exemption under the provisions of the Act which depends, in part, upon the Subscriber's investment intention. In this connection, the Subscriber hereby represents that the Subscriber is purchasing the Securities for the Subscriber's own account for investment and not with a view toward the resale or distribution thereof to others. The Subscriber, if an entity, was not formed for the purpose of purchasing the Securities. The Subscriber understands that Rule 144 promulgated under the Act requires, among other conditions, a one-year holding period prior to the resale (in limited amounts) of securities acquired in a non-public offering without having to satisfy the registration requirements under the Act.

1.9 The Subscriber understands and hereby acknowledges that the Company is under no obligation to register the Securities under the Act or any state securities or "blue sky" laws other than as set forth in Section V. The Subscriber consents that the Company may, if it desires, permit the transfer of the Securities out of the Subscriber's name only when the Subscriber's request for transfer is accompanied by an opinion of counsel reasonably satisfactory to the Company that neither the sale nor the proposed transfer results in a violation of the Act or any applicable state "blue sky" laws (collectively, "Securities Laws").

1.10 The Subscriber consents to the placement of a legend on any certificate or other document evidencing the Securities indicating that such Securities have not been registered under the Act or any state securities or "blue sky" laws and setting forth or referring to the restrictions on transferability and sale thereof contained in this Agreement. The Subscriber is aware that the Company will make a notation in its appropriate records and issue "stop transfer" instructions to its transfer agent with respect to the restrictions on the transferability of such Securities.

1.11 The Subscriber understands that the Company will review this Agreement and, if such Subscriber is an individual, hereby gives authority to the Company to call Subscriber's bank or place of employment (in a call in which the Placement Agent participates) or otherwise review the financial standing of the Subscriber; and it is further agreed that upon their mutual agreement the Placement Agent and the Company reserve the unrestricted right, without further documentation or agreement on the part of the Subscriber, to reject or limit any subscription, to accept subscriptions for Securities and to close the Offering to the Subscriber at any time.

1.12 The Subscriber hereby represents that the address of the Subscriber furnished by the Subscriber on the signature page hereof is the Subscriber's principal residence if the Subscriber is an individual or its principal business address if it is a corporation or other entity.

1.13 The Subscriber represents that the Subscriber has full power and authority (corporate, statutory and otherwise) to execute and deliver this Agreement and to purchase the Securities subscribed for hereby. This Agreement constitutes the legal, valid and binding obligation of the Subscriber, enforceable against the Subscriber in accordance with its terms.

1.14 If the Subscriber is a corporation, partnership, limited liability company, trust, employee benefit plan, individual retirement account, Keogh Plan, or other entity, then (a) it is authorized and qualified to become an investor in the Company and the person signing this Agreement on behalf of such entity has been duly authorized by such entity to do so, and (b) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

1.15 The Subscriber represents and warrants that the Subscriber is not (a) a broker or dealer admitted to membership in the National Association of Securities Dealers, Inc. ("NASD"), (b) a controlling stockholder of an NASD member, or (c) a person associated with a member of the NASD.

1.16 The Subscriber represents and warrants that it has not engaged, consented to nor authorized any broker, finder or intermediary to act on its behalf, directly or indirectly, as a broker, finder or intermediary in connection with the transactions contemplated by this Agreement. The Subscriber shall indemnify and hold harmless the Company from and against all fees, commissions or other payments owing to any such person or firm acting on behalf of such Subscriber hereunder.

1.17 The Subscriber acknowledges that (a) the Company has engaged, consented to and authorized the Placement Agent in connection with the transactions contemplated by this Agreement, (b) the Company shall pay the Placement Agent a commission and reimburse the Placement Agent's expenses and the Company shall indemnify and hold harmless the Subscriber from and against all fees, commissions or other payments owing by the Company to the Placement Agent or any other person or firm acting on behalf of the Company hereunder and (c) registered representatives of the Placement Agent and/or its designees (including, without limitation, registered representatives of the Placement Agent and/or its designees who participate in the Offering and sale of the securities sold in the Offering) will be paid a portion of the commissions paid to the Placement Agent.

1.18 The Subscriber, whose name appears on the signature line below, shall be the beneficial owner of the Securities for which such Subscriber subscribes.

1.19 The Subscriber agrees that from the time the Subscriber was first contacted by the Placement Agent regarding the Offering, until a point in time equal to the earlier of (i) the date that the Registration Statement (as defined in Section 5.2(a)) is declared effective by the SEC or (ii) four months from the date hereof, the Subscriber has not and shall not, directly or indirectly, through related parties, affiliates or otherwise, sell or purchase or otherwise deal in or with any

equity security of the Company while in possession of any material non-public information of the Company or in violation of any applicable securities law or regulation.

1.20 The Subscriber understands, acknowledges and agrees with the Company as follows:

(a) The Company may terminate the Offering or reject any subscription at any time in its sole discretion. The execution of this Agreement by the Subscriber or solicitation of the investment contemplated hereby shall create no obligation on the part of the Company or the Placement Agent to accept any subscription or complete the Offering.

(b) The Subscriber hereby acknowledges and agrees that the subscription hereunder is irrevocable by the Subscriber, and that, except as required by law, the Subscriber is not entitled to cancel, terminate or revoke this Agreement or any agreements of the Subscriber hereunder and that if the Subscriber is an individual this Agreement shall survive the death or disability of the Subscriber and shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

(c) No federal or state agency or authority has made any finding or determination as to the accuracy or adequacy of the Offering Documents or as to the fairness of the terms of the Offering nor any recommendation or endorsement of the Securities. Any representation to the contrary is a criminal offense. In making an investment decision, the Subscriber must rely on its own examination of the Company and the terms of the Offering, including the merits and risks involved.

II. REPRESENTATIONS BY THE COMPANY

The Company hereby represents and warrants to the Subscriber that:

2.1 Organization and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Louisiana and has the power and authority to conduct its business as presently conducted. The Company is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the nature of the business presently conducted by it or the properties owned, leased or operated by it, makes such qualification or licensing necessary and where the failure to be so qualified or licensed would have a material adverse effect upon the business, prospects or financial condition of the Company.

2.2 Capitalization and Voting Rights. Upon Closing, the authorized capital stock of the Company will be One Hundred Fifty Million (150,000,000) shares of Common Stock and Five Million (5,000,000) shares of preferred stock, of which 20,612,684 shares of Common Stock, 257,172 shares Series A 6% Participating Convertible Preferred Stock (the "Series A Preferred Stock"), and no shares of Series B Preferred Stock are issued and outstanding as of July 31, 2004. All issued and outstanding shares of capital stock of the Company are validly issued, fully paid and nonassessable. Except as set forth in this Agreement or in the SEC Filings (as hereafter defined), there are no outstanding options, warrants, agreements, commitments, convertible securities, preemptive rights or other rights to subscribe for or to purchase any shares of capital stock of the Company nor are there any agreements, promises or commitments to issue

any of the foregoing. Except as set forth in the SEC Filings, in this Agreement and as otherwise required by law, there are no restrictions upon the voting or transfer of the Purchased Securities pursuant to the Company's Articles of Incorporation, as amended (the "Articles of Incorporation"), By-laws or other governing documents or any agreement or other instruments to which the Company is a party or by which the Company is bound.

2.3 Authorization; Enforceability. The Company has the corporate right and corporate authority to enter into this Agreement and to consummate the transactions contemplated hereby. All corporate action on the part of the Company, its directors and stockholders necessary for the authorization, execution, delivery and performance of this Agreement by the Company, the authorization, sale, issuance and delivery of the Purchased Securities and the performance of the Company's obligations hereunder has been taken. This Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies, and to limitations of public policy. The Purchased Securities have been duly and validly authorized and, upon the issuance and delivery thereof and, in the case of the Securities, payment therefor as contemplated by this Agreement, will be free and clear of liens, duly and validly authorized and issued, fully paid and nonassessable and will not impose personal liability on the holder thereof. The issuance and sale of the Purchased Securities contemplated hereby will not give rise to any preemptive rights or rights of first refusal on behalf of any person.

2.4 No Conflict; Governmental Consents.

(a) The execution, delivery and performance by the Company of this Agreement, the consummation of the transactions contemplated hereby and the offer and sale of the Purchased Securities will not result in the violation of any law, statute, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental authority to or by which the Company is bound, or of any provision of the Articles of Incorporation or By-laws of the Company, and will not conflict with, or result in a breach or violation of, any of the terms or provisions of, or constitute (with due notice or lapse of time or both) a default under, or give to others any rights of termination, amendment (including without limitation, the triggering of any anti-dilution provisions), acceleration or cancellation of any lease, loan agreement, mortgage, security agreement, trust indenture or other agreement or instrument to which the Company is a party or by which it is bound or to which any of its properties or assets is subject, nor result in the creation or imposition of any lien upon any of the properties or assets of the Company.

(b) No consent, waiver, approval, authorization or other order of any governmental authority or other third-party is required to be obtained by the Company in connection with the authorization, execution, delivery and performance of this Agreement or with the authorization, issuance and sale of the Purchased Securities, except for such consents, waivers, approvals, authorizations or orders as may be required to be obtained or made, and which shall have been obtained or made at or prior to the Closing Date.

2.5 Licenses. The Company has all licenses, permits and other governmental authorizations currently required for the conduct of its business or ownership of properties and is

in all material respects complying therewith, except for any licenses, permits or other governmental authorizations which would not materially adversely affect the business, property, financial condition, results of operations or prospects of the Company.

2.6 Litigation. The Company knows of no pending or threatened legal or governmental proceedings against the Company which could materially adversely affect the business, property, financial condition, prospects, results of operations or prospects of the Company.

2.7 Accuracy of Reports. All reports required to be filed by the Company under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), since December 31, 2003, have been duly and timely filed with the SEC. All such reports complied at the time of their respective filing dates in all material respects with the requirements of the Exchange Act or the Act, as applicable, and all rules and regulations thereunder of their respective forms. None of such reports contained (as of their respective dates) any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

2.8 Investment Company. The Company is not an "investment company" within the meaning of such term under the Investment Company Act of 1940, as amended, and the rules and regulations of the SEC thereunder.

2.9 Intellectual Property. The Company owns or possesses sufficient rights to use all patents, patent rights, trademarks, copyrights, licenses, inventions, trade secrets, trade names and know-how that are necessary for the conduct of its business as now conducted except where the failure to own or possess would not have a material adverse effect on the business, assets, financial condition, prospects or results of operation of the Company (the "Company Intellectual Property"). Except as set forth in the SEC Filings, (i) the Company has not received any written notice of, and has no knowledge of, any infringement by the Company of intellectual property rights of any third party that, individually or in the aggregate, would have a material adverse effect on the business, assets, financial condition, prospects or results of operation of the Company and (ii) the Company has not received any written notice of any infringement by a third party of any Company Intellectual Property that, individually or in the aggregate, would have a material adverse effect on the business, assets, financial condition, prospects or results of operation of the Company.

2.10 Insurance. The Company and each of its subsidiaries has in force fire, casualty, product liability and other insurance policies, with extended coverage, sufficient in amount to allow it to replace any of its material properties or assets which might be damaged or destroyed or sufficient to cover liabilities to which the Company may reasonably become subject, and such types and amounts of other insurance with respect to its business and properties, on both a per occurrence and an aggregate basis, as are customarily carried by persons engaged in the same or similar business as the Company. No default or event has occurred that could give rise to a default under any such policy.

2.11 Anti-Takeover Provisions. The Company and its board of directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under its Certificate of Incorporation or the laws of the state of its incorporation which is or could become applicable to any Subscriber as a result of the transactions contemplated by this Agreement, including, without limitation, the Company's issuance of the Securities and the shares of Common Stock into which such Securities are convertible or exercisable, as the case may be, and any and all Subscriber's ownership of the Securities and the shares of Common Stock into which such Securities are convertible or exercisable, as the case may be, provided that neither the anti-dilution nor change of control approval rights of holders of outstanding securities of the Company shall be deemed to be included in this representation to the extent such rights may become available to them following the Closing Date as a result of changes in circumstances occurring after the Closing Date.

2.12 No Material Adverse Change. Since the filing of the Company's most recent SEC Report on Form 10-Q, (i) there has not been any material adverse change (financial or otherwise) in the assets, properties, financial condition, prospects, operating results or business of the Company, and (ii) there has been no event or condition of any character that might have a material adverse effect (financial or otherwise) on the assets, properties, financial condition, prospects, operating results or business of the Company.

2.13 Financial Statements. The financial statements included in the Company's most recent Annual Report on Form 10-K for the fiscal year ended December 31, 2003 and all other reports filed by the Company with the SEC pursuant to the Exchange Act since the filing of such Annual Report on Form 10-K and prior to the date hereof (collectively, the "SEC Filings") present fairly and accurately in all material respects the financial position of the Company as of the dates shown and its results of operations and cash flows for the periods shown, and such financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis (except as may be indicated thereon or in the notes thereto and subject, in the case of unaudited financial statements, to normal adjustments). Except as set forth in the financial statements of the Company included in the SEC Filings filed prior to the date hereof, to the Company's knowledge, the Company has no liabilities, contingent or otherwise, except those which individually or in the aggregate are not material to the financial condition or operating results of the Company.

2.14 Compliance with Laws. Neither the Company nor, to the Company's knowledge, any Person (as hereafter defined) acting on the Company's behalf and in accordance with the Company's instructions, has conducted any general solicitation or general advertising (as those terms are used in Regulation D of the Act) in connection with the offer or sale of the Securities. Neither the Company nor any of its Affiliates (as hereafter defined), nor, to the Company's knowledge, any Person acting on the Company's or on the behalf of its Affiliates and in accordance with the Company's instructions, has, directly or indirectly, made any offers or sales of any security of the Company or solicited any offers to buy any security of the Company, under circumstances that would adversely affect reliance by the Company on Section 4(2) of the Act for the exemption from registration for the transactions contemplated hereby or would require registration of the Securities under the Act. There are no proceedings pending or to the

Company's knowledge threatened against the Company relating to the continued trading of the Company's Common Stock on the OTC Bulletin Board®.

2.15 No Violation. The Company is not in violation of its Articles of Incorporation, Bylaws or other organizational documents. The Company is not in default (and no event has occurred that with notice or lapse of time or both would put the Company in default) under, nor has there occurred any event giving others (with notice or lapse of time or both) any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company is a party, except for actual or possible violations, defaults or rights that would not, individually or in the aggregate, have a material adverse effect on the business, property, financial condition, results of operations or prospects of the Company. Except as set forth in the Offering Documents, the business of the Company is not being conducted in violation of any law, ordinance or regulation of any governmental entity, except for possible violations the sanctions for which either individually or in the aggregate have not had and would not have a material adverse effect on the business, property, financial condition, results of operations or prospects of the Company.

2.16 Tax Matters. The Company has timely filed all material federal, state, local and foreign income and franchise and other tax returns required to be filed by any jurisdiction to which it is subject and has paid all taxes due in accordance therewith, and no tax deficiency has been determined adversely to the Company which has had (nor does the Company have any knowledge of any tax deficiency which, if determined adversely to the Company would reasonably be expected to have) a material adverse effect on the business, assets, financial condition or results of operation of the Company.

2.17 Disclosure. None of the representations and warranties of the Company appearing in this Agreement, when considered together as a whole, contains, or on the Closing Date will contain, any untrue statement of a material fact or omits, or on the Closing Date will omit, to state any material fact required to be stated herein or therein in order for the statements herein or therein, in light of the circumstances under which they were made, not to be misleading.

III. TERMS OF SUBSCRIPTION

3.1 The Offering is for up to 170,000 shares of Series B Preferred Stock and Warrants equal to thirty percent (30%) of the total number of shares of Common Stock into which the Series B Preferred Stock is convertible. The Securities are offered on a "best efforts" basis.

3.2 Upon the mutual consent of the Company and the Placement Agent, this Offering may close (the "Closing") prior to the sale of all 170,000 shares of Series B Preferred Stock and there is no assurance that all 170,000 shares of Series B Preferred Stock will be sold. The Closing shall occur at the discretion of the Company and the Placement Agent (the "Closing Date"). The purchase price is payable by wire transfer of immediately available funds as provided in Section 1.1.

3.3 The Subscriber hereby authorizes and directs the Company to deliver the Securities to be issued to the Subscriber pursuant to this Agreement directly to the Subscriber's

account maintained by the Placement Agent or, if no such account exists, to the residential or business address indicated on the signature page hereto.

3.4 The Subscriber hereby authorizes and directs the Company to return any funds related to unaccepted subscriptions to the same account from which the funds were drawn, including any customer account maintained with the Placement Agent.

IV. CONDITIONS TO OBLIGATIONS OF THE SUBSCRIBERS AND THE COMPANY

4.1 The Subscribers' obligation to purchase the Securities at the Closing is subject to the fulfillment on or prior to the Closing Date of the following conditions, which conditions may be waived at the option of each Subscriber to the extent permitted by law:

(a) Representations and Warranties. The representations and warranties made by the Company in Section II hereof shall be true and correct in all material respects when made, and shall be true and correct in all material respects on the Closing Date with the same force and effect as if they had been made on and as of said date.

(b) Covenants. All covenants, agreements and conditions contained in this Agreement to be performed by the Company on or prior to such purchase shall have been performed or complied with in all material respects.

(c) No Legal Order Pending. There shall not then be in effect any legal or other order enjoining or restraining the transactions contemplated by this Agreement.

(d) No Law Prohibiting or Restricting Such Sale. There shall not be in effect any law, rule or regulation prohibiting or restricting such sale or requiring any consent or approval of any person to issue the Securities which consent or approval shall not have been obtained (except as may otherwise be provided in this Agreement).

(e) Legal Opinion. Upon the Closing, counsel to the Company shall have delivered to the Placement Agent for the benefit of the Subscribers a legal opinion with respect to such legal matters relating to this Agreement and the Offering as the Placement Agent may reasonably require.

(f) Officer's Certificate. The Company shall have delivered to the Placement Agent on behalf of the Subscribers a certificate, dated the Closing Date, duly executed on behalf of the Company by its Chief Executive Officer to the effect set forth in clauses (a) and (b) above.

(g) CFO's Certificate. The Company shall have delivered to the Placement Agent on behalf of the Subscribers a certificate, dated the Closing Date, duly executed by its Chief Financial Officer or other appropriate officer, certifying that the attached copies of the Company's Articles of Incorporation, by-laws and the resolutions of the Board of Directors, or a committee to which it has delegated its authority, approving this Agreement and the transactions contemplated hereby, are all true, complete and correct and remain unamended and in full force and effect.

(h) Amount Invested. The Company shall have received on or before the Closing not less \$10,000,000 in the aggregate from other Subscribers in connection with the Offering.

4.2 The Company's obligation to sell the Securities at the Closing is subject to the fulfillment on or prior to the Closing Date of the following conditions, which conditions may be waived at the option of the Company to the extent permitted by law:

(a) Acknowledgements, Representations and Warranties. The acknowledgements, representations and warranties made by the Subscriber in Section I hereof shall be true and correct in all material respects when made, and shall be true and correct in all material respects on the Closing Date with the same force and effect as if they had been made on and as of said date; provided, however, that any acknowledgement, representation or warranty made by the Subscriber that is not true and correct and as a result the Subscriber is not an "accredited investor" under Rule 501 under Regulation D of the Act or the Company is not able to rely upon a private placement exemption under Rule 506 under Regulation D of the Act for the issuance of the Securities will automatically be deemed to be material. If any such representations, warranties or acknowledgements shall not be true and accurate in any respect prior to the Closing, the undersigned shall give immediate written notice of such fact to the Company, to the Placement Agent, and to his representatives, if any, specifying which representations, warranties or acknowledgements are not true and accurate and the reason therefor.

(b) Covenants. All covenants, agreements and conditions contained in this Agreement to be performed by the Subscriber on or prior to such purchase shall have been performed or complied with in all material respects.

(c) No Legal Order Pending. There shall not then be in effect any legal or other order enjoining or restraining the transactions contemplated by this Agreement.

(d) No Law Prohibiting or Restricting Such Sale. There shall not be in effect any law, rule or regulation prohibiting or restricting such sale or requiring any consent or approval of any person to issue the Securities which consent or approval shall not have been obtained (except as may otherwise be provided in this Agreement).

(e) Amount Invested. The Company shall have received on or before the Closing not less \$10,000,000 in the aggregate from other Subscribers in connection with the Offering.

V. REGISTRATION RIGHTS.

5.1 As used in this Agreement, the following terms shall have the following meanings:

(a) “Affiliate” shall mean, with respect to any Person (as defined below), any other Person controlling, controlled by, or under direct or indirect common control with, such Person (for the purposes of this definition “control,” when used with respect to any specified Person, shall mean the power to direct the management and policies of such person, directly or indirectly, whether through ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” shall have meanings correlative to the foregoing).

(b) “Business Day” shall mean a day, Monday through Friday, on which banks are generally open for business in each of New York, New York; Boston, Massachusetts; and Buffalo Grove, Illinois.

(c) “Holders” shall mean the Subscriber and any person holding Registrable Securities as defined below, or any person to whom the rights under Section V have been transferred in accordance with Section 5.9 hereof, and who, if known by the Company, shall be specifically named by the Company as selling stockholders in the Registration Statement (as defined below).

(d) “Person” shall mean any person, individual, corporation, limited liability company, partnership, trust or other nongovernmental entity or any governmental agency, court, authority or other body (whether foreign, federal, state, local or otherwise).

(e) The terms “register,” “registered” and “registration” refer to the registration effected by preparing and filing with the SEC a registration statement in compliance with the Act, and the declaration or ordering by the SEC of the effectiveness of such registration statement.

(f) “Registrable Securities” shall mean the shares of Common Stock issuable upon conversion of the Series B Preferred Stock and exercise of the Warrants and any shares of capital stock issued or issuable, from time to time, as a distribution on or in exchange for or otherwise with respect to any of the foregoing (including the Series B Preferred Stock and the Warrants), whether as default payments, on account of anti-dilution or other adjustments or otherwise (including without limitation all shares of Replacement Common Stock, if any); provided, however, that securities shall only be treated as Registrable Securities if and only for so long as they (A) have not been disposed of pursuant to a registration statement declared effective by the SEC, (B) have not been sold in a transaction exempt from the registration and prospectus delivery requirements of the Act so that all transfer restrictions and restrictive legends with respect thereto are removed upon the consummation of such sale, and (C) are held by a Holder or a permitted transferee pursuant to Section 5.9.

(g) “Registration Expenses” shall mean all expenses incurred by the Company in complying with Section 5.2 hereof, including, without limitation, all registration, qualification and filing fees, printing expenses, escrow fees, fees and expenses of counsel for the Company, blue sky fees and expenses and the expense of any special audits incident to, or required by, any such registration (but excluding the aggregate fees of legal counsel for all Holders).

(h) “Registration Statement” shall have the meaning ascribed to such term in Section 5.2 (a).

(i) "Registration Period" shall have the meaning ascribed to such term in Section 5.4 (a).

(j) "Required Senior Lenders" shall mean "Required Lenders" as such term is defined in the Senior Credit Agreement.

(k) "Selling Expenses" shall mean all underwriting discounts and selling commissions applicable to the sale of Registrable Securities and the aggregate fees and expenses of legal counsel for all Holders.

(l) "Senior Credit Agreement" shall mean that certain Credit Agreement dated as of October 7, 2003 by and among the Company, Akorn (New Jersey), Inc., the financial institutions from time to time party thereto, as lenders, and LaSalle Bank, National Association, as administrative agent, as such Credit Agreement may be amended, restated, supplemented or otherwise modified from time to time.

5.2 The Company shall, as soon as practicable, but not later than thirty (30) days after the Closing Date (the "Filing Date"), (i) use its reasonable best efforts to file with the SEC a registration statement on Form S-1 (the "Registration Statement") with respect to the resale of the Registrable Securities and use its reasonable best efforts to have such Registration Statement declared effective by the SEC within 90 days from the Closing Date and (ii) cause such Registration Statement to remain effective for the Registration Period. Without limiting the generality of the foregoing, within three business days after any Registration Statement that includes Registrable Securities is declared effective by the SEC, the Company shall cause legal counsel selected by the Company to deliver to the transfer agent for the Registrable Securities (with copies to any Holder whose Registrable Securities are included in such Registration Statement), an opinion of such counsel providing that such Registrable Securities are available for resale under the Act pursuant to the Registration Statement. If such Registration Statement is not declared effective within such 90 day period from the Closing Date, the Holders will have the following rights:

(a) If the Registration Statement is not declared effective within 120 days from the Closing Date (or if the SEC issues any stop order(s) suspending the effectiveness of the Registration Statement for a period of more than 60 days during such 120 day period), then for each 30 day period following the end of such 120 day period until the earlier to occur of (i) the Registration Statement becomes effective, (ii) the end of the Registration Period, or (iii) the exercise by the Holder of the option to sell such Holder's shares of Series B Preferred Stock pursuant to Section 5.2(b) below, and the Company's satisfaction of its obligation under Section 5.2(b) below, the Company will pay to each Holder an amount equal to 1.0% of the purchase price set forth upon the signature page hereof for the shares of Series B Preferred Stock purchased by such Holder, and for any partial 30 day period the Company shall pay a prorated amount based on the number of days in such partial period. Payments of amounts due under this Section 5.2(a), if any, shall be made by the Company to each Holder (i) 270 days from the Closing Date, and (ii) on the last day of each calendar year thereafter.

(b) If the Registration Statement is not declared effective within 270 days from the Closing Date, each Holder will have the right, for a period of 60 days following the end of such 270 day period, to sell to the Company, and the Company shall have the obligation to purchase from each Holder, the shares of Series B Preferred Stock held by such Holder, for cash, at a purchase price equal to 115% of the purchase price set forth upon the signature page hereof for the shares of Series B Preferred Stock purchased by such Holder prorated in the event such right is not exercised as to all such shares. Holder shall exercise this right by completing and delivering the notice of exercise attached hereto as Exhibit A together with the stock certificate for the shares duly endorsed in blank (together, the "Notice of Exercise") within such 60 day period. Payment of the purchase price under this Section 5.2(b) shall be made by the Company within 15 days of receipt of the Notice of Exercise by the Company to each exercising Holder who delivers such notice within the requisite 60 day period.

(c) (i) Notwithstanding the foregoing clauses (a) and (b) (the "Penalty Provisions"), the Company and each Holder hereby acknowledge that (i) the Holder's right to receive payments in cash pursuant to the Penalty Provisions is subordinate to the Company's obligations under the Senior Credit Agreement as in effect on the date hereof, (ii) the Company cannot make any payment in cash to the Holders pursuant to the Penalty Provisions without (x) the prior written consent of the Required Senior Lenders or (y) unless the Company's obligations under the Senior Credit Agreement are satisfied. Nothing in this Section 5.2(c) shall prohibit the accrual and compounding of dividends pursuant to the terms of the Series B Preferred Stock and the conversion of the Series B Preferred Stock into shares of Common Stock issuable as a result of any such accrual and compounding of dividends, as provided in paragraph D to Article V of the Articles of Incorporation of the Company, as amended.

(ii) The Company may, in its sole discretion, in place of any cash payment otherwise due to the Holder pursuant to Section 5.2(a) above (each a "Penalty Cash Payment"), pay to such Holder when such Penalty Cash Payment is otherwise due, for no further consideration, the number of fully paid, validly issued and non-assessable shares of Common Stock, free from all taxes, liens, claims and encumbrances (the "Replacement Common Stock") equal to the number obtain by dividing the amount of (x) the Penalty Cash Payment by (y) the Closing Price (defined below) on the date immediately preceding the date such Penalty Cash Payment is otherwise due. Any fractions of shares of Replacement Common Stock shall be rounded up to the nearest whole number of shares. The Company covenants that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, a sufficient number of shares of Replacement Common Stock, free from preemptive rights or any other contingent purchase rights of persons other than the Holder. For purposes of this Agreement, the "Closing Price" per share of Common Stock on any date shall mean the closing sale price on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Common Stock or such other securities are listed or admitted to trading or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the last quoted sale price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the NASD Automated Quotation System or such other system then in use, or, if on any such date the Common Stock or such other securities are not quoted by any such organization, the average of

the closing bid and asked prices as furnished by a professional market maker, selected by the Board of Directors and reasonably acceptable to the holders of a majority of the outstanding shares of Series B Preferred Stock, making a market in the Common Stock or such other securities of the Company.

5.3 All Registration Expenses incurred in connection with any registration, qualification, exemption or compliance pursuant to Section 5.2 shall be borne by the Company. All Selling Expenses relating to the sale of securities registered by or on behalf of Holders shall be borne by such Holders pro rata on the basis of the number of securities so registered.

5.4 In the case of the registration, qualification, exemption or compliance effected by the Company pursuant to this Agreement, the Company shall, upon reasonable request, inform each Holder as to the status of such registration, qualification, exemption and compliance. At its expense the Company shall:

(a) use its reasonable best efforts to keep such registration, and any qualification, exemption or compliance under state securities laws which the Holders reasonably request the Company to obtain, continuously effective as to all Registrable Securities until the earlier of: (i) the Holders having completed the distribution of the Registrable Securities described in the Registration Statement relating thereto; or (ii) with respect to any Holder, such time as all Registrable Securities then held by such Holder may be sold in compliance with Rule 144 under the Act within any three-month period. The period of time during which the Company is required hereunder to keep the Registration Statement effective is referred to herein as "the Registration Period";

(b) advise the Holders (or in the case of (ii) below, advise the Placement Agent):

(i) when the Registration Statement or any amendment thereto has been filed with the SEC and when the Registration Statement or any post-effective amendment thereto has become effective;

(ii) of any request by the SEC for amendments or supplements to the Registration Statement or the prospectus included therein or for additional information;

(iii) of the issuance by the SEC of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for such purpose;

(iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities included therein for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and

(v) subject to the limitations set forth in Section 5.7(b)(ii) hereof, of the happening of any event that requires the making of any changes in the Registration Statement or the prospectus so that, as of such date, the statements therein are not misleading and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the prospectus, in the light of the circumstances under which they were made) not misleading;

(c) make every reasonable effort to obtain the withdrawal of any order suspending the effectiveness of any Registration Statement at the earliest possible time;

(d) furnish to each Holder, without charge, at least one copy of such Registration Statement and any post-effective amendment or supplement thereto, including financial statements and schedules, and, if the Holder so requests in writing, all exhibits (excluding those incorporated by reference) in the form filed with the SEC;

(e) during the Registration Period, deliver to each Holder, without charge, a reasonable number of copies of the prospectus included in such Registration Statement and any amendment or supplement thereto as such Holder may reasonably request; and the Company consents to the use, consistent with the provisions hereof, of the prospectus and any amendment or supplement thereto by each of the selling Holders of Registrable Securities in connection with the offering and sale of the Registrable Securities covered by the prospectus and any amendment or supplement thereto;

(f) during the Registration Period, deliver to each Holder, upon request, (i) a copy of the full Registration Statement (excluding exhibits); (ii) all exhibits excluded by the parenthetical to the immediately preceding clause (i); and (iii) such other documents as may be reasonably requested by the Holder.

(g) prior to any public offering of Registrable Securities pursuant to the Registration Statement, register or qualify or obtain an exemption for the offer and sale under the securities or blue sky laws of such jurisdictions as any such Holders reasonably request in writing, provided that the Company shall not for any such purpose be required to qualify generally to transact business as a foreign corporation in any jurisdiction where it is not so qualified or to consent to general service of process in any such jurisdiction, and do any and all other acts or things reasonably necessary or advisable to enable the offer and sale in such jurisdictions of the Registrable Securities covered by the Registration Statement;

(h) cooperate with the Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold pursuant to the Registration Statement, free of any restrictive legends to the extent not required at such time and in such denominations and registered in such names as Holders may request;

(i) upon the occurrence of any event contemplated by Section 5.4(b)(v) above, the Company shall promptly prepare a post-effective amendment to the Registration Statement or a supplement to the related prospectus, or file any other required document so that, as thereafter delivered to purchasers of the Registrable Securities included therein, the prospectus will not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(j) use its reasonable best efforts to comply in all material respects with all applicable rules and regulations of the SEC, and make generally available to the Holders not later than 45 days (or 90 days if the fiscal quarter is the fourth fiscal quarter) after the end of its fiscal quarter in which the first anniversary date of the effective date of the Registration Statement occurs, an earnings statement satisfying the provisions of Section 11(a) of the Act; and

(k) at the request of any Subscriber, the Company shall prepare and file with the SEC such amendments (including post-effective amendments) and supplements to any Registration Statement required to be filed hereunder and the prospectus used in connection with such Registration Statement as may be necessary in order to change the plan of distribution set forth in such Registration Statement.

5.5 The Holders shall have no right to take any action to restrain, enjoin or otherwise delay any registration pursuant to Section 5.2 hereof as a result of any controversy that may arise with respect to the interpretation or implementation of this Agreement.

5.6 (a) To the extent permitted by law, the Company shall indemnify each Holder, each underwriter of the Registrable Securities and each person controlling such Holder and each such underwriter within the meaning of Section 15 of the Act, and each director, officer, partner, member, employee and agent of each such Holder and each such underwriter, with respect to which any registration, qualification or compliance has been sought, contemplated by or required pursuant to this Agreement, against all claims, losses, expenses, costs, damages and liabilities (or action in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened (subject to Section 5.6(c) below), arising out of or based on (i) any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus or offering circular, or any amendment or supplement thereof, incident to any such registration, qualification or compliance, or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances in which they were made, or (ii) any violation or alleged violation by the Company of the Act, the Exchange Act, or any rule or regulation promulgated under the Act or the Exchange Act, and shall reimburse each Holder, each underwriter of the Registrable Securities and each person controlling such Holder and each such underwriter, for reasonable legal and other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action as and when incurred; provided that the Company shall not be liable in any such case to the extent that any untrue statement or omission or allegation thereof is made in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Holder or underwriter and stated to be specifically for use in such registration statement, prospectus or offering circular; provided that the Company shall not be liable in any such case where the claim, loss, damage or liability arises out of or is related to the failure of the Holder to comply with the covenants and agreements contained in Section 5.7 hereof, and except that the foregoing indemnity agreement is subject to the condition that, insofar as it relates to any such untrue statement or alleged untrue statement or omission or alleged omission made in the preliminary prospectus but eliminated or remedied in the amended prospectus on file with the SEC at the time the registration statement becomes effective or in the amended prospectus filed with the SEC pursuant to Rule 424(b) of the Act or in the prospectus subject to completion under Rule 434 of the Act, which together meet the requirements of

Section 10(a) of the Act (the “Final Prospectus”), such indemnity agreement shall not inure to the benefit of any such Holder, any such underwriter or any such controlling person, if a copy of the Final Prospectus furnished by the Company to the Holder for delivery was not furnished to the person or entity asserting the loss, liability, claim or damage at or prior to the time such furnishing is required by the Act and the Final Prospectus would have cured the defect giving rise to such loss, liability, claim or damage. Except as otherwise set forth herein, the Company shall reimburse each Holder, upon such Holder’s demand, for all reasonably necessary expenses and costs which are incurred, as and when incurred, by such Holder as a result of the indemnification claims described in this Section 5.6(a). Such demand may be made from time to time prior to resolution of the claim. In no event shall the Company be liable for the expenses and costs of more than one attorney on behalf of the Holders unless in the reasonable judgment of a Holder, based upon written advice of its counsel, a conflict of interest exists between the Holders with respect to such claims, in which case the Company shall reimburse the Holders for additional attorneys.

(b) Each Holder will severally and not jointly, if Registrable Securities held by such Holder are included in the securities as to which such registration, qualification or compliance is being effected, indemnify the Company, each of its directors and officers, each underwriter of the Registrable Securities and each person who controls the Company and each underwriter of the Registrable Securities within the meaning of Section 15 of the Act, against all claims, losses, expenses, costs, damages and liabilities (or actions in respect thereof), including any of the foregoing incurred in settlement of any litigation, commenced or threatened (subject to Section 5.6(c) below), arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus or offering circular, or any amendment or supplement thereof, incident to any such registration, qualification or compliance or based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances in which they were made, and will reimburse the Company, such directors and officers, each underwriter of the Registrable Securities and each person controlling the Company and each underwriter of the Registrable Securities for reasonable legal and any other expenses or costs reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action as and when incurred, in each case to the extent, but only to the extent, that such untrue statement or omission or allegation thereof is made in reliance upon, and in conformity with, written information furnished to the Company by or on behalf of the Holder and stated to be specifically for use in such registration statement, prospectus or offering circular; provided that the indemnity shall not apply to the extent that such claim, loss, damage or liability results from the fact that a current copy of the prospectus or offering circular was not made available to the Holder and such current copy of the prospectus or offering circular would have cured the defect giving rise to such loss, claim, expense, costs, damage or liability. Notwithstanding the foregoing, in no event shall a Holder be liable for any such claims, losses, expenses, costs, damages or liabilities in excess of the proceeds received by such Holder in that offering, except in the event of fraud by such Holder and such fraud gave rise in whole or in part to such loss, claim, expense, cost, damage or liability.

(c) Each party entitled to indemnification under this Section 5.6 (the “Indemnified Party”) shall give notice to the party required to provide indemnification (the “Indemnifying Party”) promptly after such Indemnified Party has actual knowledge of any claim

as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld), and the Indemnified Party may participate in such defense with its own counsel at such Indemnified Party's expense unless the named parties to any proceeding covered hereby (including any impleaded parties) include both the Company or any others the Company may designate and one or more Indemnified Persons, and representation of the Indemnified Persons and such other parties by the same counsel would be inappropriate due to actual or potential differing interests between them, and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Agreement, unless such failure is materially prejudicial to the Indemnifying Party in defending such claim or litigation. An Indemnifying Party shall not be liable for any settlement of an action or claim effected without its written consent (which consent will not be unreasonably withheld).

(d) If the indemnification provided for in this Section 5.6 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any loss, liability, claim, damage, cost or expense referred to therein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party thereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, liability, claim, damage, cost or expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions which resulted in such loss, liability, claim, damage, cost or expense as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied or which should have been supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; provided, however, that (a) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any seller of Registrable Securities who was not guilty of such fraudulent misrepresentation, and (c) contribution (together with any indemnification or other obligations under this Agreement) by any seller of Registrable Securities shall be limited in amount to the net amount of proceeds received by such seller from the sale of such Registrable Securities.

5.7 (a) Subject to the limitations set forth in Section 5.7(b)(ii) below, upon receipt of any notice from the Company of the happening of any event requiring the preparation of a supplement or amendment to a prospectus relating to Registrable Securities so that, as thereafter delivered to the Holders, such prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, each Holder shall forthwith discontinue disposition of Registrable Securities pursuant to the registration statement contemplated by Section 5.2 until its receipt of copies of the supplemented or amended prospectus from the Company and, if so directed by the Company, each Holder shall deliver to the Company all copies, other than permanent file copies then in such Holder's possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice.

(b) Any Holder which owns five percent (5%) or more (and with respect to 5.7(b)(ii), “any Holder” regardless of how many shares of Common Stock the Holder owns) of the Company’s outstanding Common Stock shall suspend, upon request of the Company, any disposition of Registrable Securities pursuant to the Registration Statement and prospectus contemplated by Section 5.2 during (i) any period not to exceed one 180-day period within any one 12-month period the Company requires in connection with an underwritten offering of equity securities and (ii) any period, not to exceed two 45-day periods within any 12-month period, when the Company determines in good faith that offers and sales pursuant thereto should not be made by reason of the presence of material undisclosed circumstances or developments with respect to which the disclosure that would be required in such a prospectus is premature and may reasonably be expected to have an adverse effect on the Company. The period of time in which the disposition of Registrable Securities pursuant to the Registration Statement and prospectus is so suspended shall be referred to as a “Black-Out Period.” The Company agrees to so advise the Holders promptly of the commencement and termination of any such Black-Out Period, and the Holders agree to keep the fact of such Black-Out Period confidential.

(c) As a condition to the inclusion of its Registrable Securities, each Holder shall furnish to the Company such information regarding such Holder, the securities of the Company owned beneficially or of record by such Holder and the distribution proposed by such Holder as the Company may request in writing to the extent such information is required in connection with any registration, qualification or compliance referred to in this Section V.

(d) With respect to any sale of Registrable Securities pursuant to a Registration Statement filed pursuant to this Section V, each Holder hereby covenants with the Company not to make any sale of the Registrable Securities without effectively causing the prospectus delivery requirements under the Act to be satisfied.

(e) At the end of the Registration Period, the Holders of Registrable Securities included in the Registration Statement shall discontinue sales of shares pursuant to such Registration Statement upon receipt of notice from the Company of its intention to remove from registration the shares covered by such Registration Statement which remain unsold.

5.8 (a) So long as any Holder (or any of their respective affiliates) beneficially owns any of the Registrable Securities, the Company shall maintain the listing or eligibility for quotation of all Registrable Securities then issued on each national securities exchange, automated quotation system or electronic bulletin board on which shares of Common Stock are currently listed. The Company shall use its reasonable best efforts to continue the trading of its Common Stock on the OTC Bulletin Board®, or on the Nasdaq SmallCap Market, the Nasdaq National Market, the American Stock Exchange or the New York Stock Exchange and will comply in all material respects with the reporting, filing and other obligations under the bylaws or rules of the NASD, such exchanges or such electronic system, as applicable.

(b) With a view to making available to the Holders the benefits of certain rules and regulations of the SEC which at any time permit the sale of the Registrable Securities to the public without registration, the Company shall use its reasonable best efforts:

(i) to make and keep public information available, as those terms are understood and defined in Rule 144 under the Act, at all times;

(ii) to file with the SEC in a timely manner all reports and other documents required of the Company under the Exchange Act; and

(iii) so long as a Holder owns any Registrable Securities, to furnish to such Holder upon any reasonable request a written statement by the Company as to its compliance with Rule 144 under the Act, and of the Exchange Act, and a copy of the most recent annual or quarterly report of the Company, and such other reports and documents of the Company as such Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing a Holder to sell any such securities without registration.

5.9 The rights and obligations of the Holders under this Section V may not be assigned or transferred to or assumed by any transferee or assignee except (i) to a transferee that acquires at least 20% of such Holder's Registrable Securities or (ii) to an Affiliate or limited or general partner of a Holder; provided that such transfer was not in violation of this Agreement or the Securities Laws.

VI. MISCELLANEOUS

6.1 Any notice or other communication given hereunder shall be deemed sufficient in writing and sent by (a) telecopy or facsimile at the address or number designated below (if delivered on a business day during normal business hours where such notice is to be received); or (b) registered or certified mail, return receipt requested, or delivered by hand against written receipt therefor, addressed to Akorn, Inc., Facsimile: (847) 279-6123, Attention: Chief Financial Officer, with a copy to Leerink Swann & Company, One Federal Street, Boston, Massachusetts 02110, Facsimile (617) 918-4900, Attention: Stuart R. Barich. Notices shall be deemed to have been given or delivered on the date of mailing, except notices of change of address, which shall be deemed to have been given or delivered when received.

6.2 This Agreement shall not be changed, modified or amended except by a writing signed by the parties to be changed, and this Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the party to be changed.

6.3 Upon the execution and delivery of this Agreement by the Subscriber, this Agreement shall become a binding obligation of the Subscriber with respect to the purchase of Securities as herein provided, subject to acceptance by the Company and the Placement Agent; subject, however, to the right hereby reserved to the Company to enter into the same agreements with other subscribers and to add and/or delete other persons as subscribers.

6.4 Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all the terms and provisions hereof shall be construed in accordance with and governed by the laws of the State of New York without regard to principles of conflicts of law.

6.5 The holding of any provision of this Agreement to be invalid or unenforceable by a court of competent jurisdiction shall not affect any other provision of this Agreement, which

shall remain in full force and effect. If any provision of this Agreement shall be declared by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced in whole or in part, such provision shall be interpreted so as to remain enforceable to the maximum extent permissible consistent with applicable law and the remaining conditions and provisions or portions thereof shall nevertheless remain in full force and effect and enforceable to the extent they are valid, legal and enforceable, and no provisions shall be deemed dependent upon any other covenant or provision unless so expressed herein.

6.6 It is agreed that a waiver by either party of a breach of any provision of this Agreement shall not operate, or be construed, as a waiver of any subsequent breach by that same party.

6.7 The parties agree to execute and deliver all such further documents, agreements and instruments and take such other and further action as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

6.8 This Agreement may be executed in two or more counterparts each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

6.9 On or before 9:00 a.m., New York time, on the first business day following the Closing Date, the Company shall file a Current Report on Form 8-K describing the terms of the transactions contemplated by this Agreement in the form required by the Exchange Act and attaching the material terms of this Agreement (including, without limitation, this Agreement, and the form of Warrant) as exhibits to such filing (including all attachments, the "8-K Filing"). As of the filing of the 8-K Filing with the SEC, the Subscriber shall not be in possession of any material, nonpublic information that it received from the Company or any of its respective officers, directors, employees or agents, that is not disclosed in the 8-K Filing. The Company shall not, and shall cause each of its respective officers, directors, employees and agents, not to, provide the Subscriber with any material, nonpublic information regarding the Company from and after the filing of the 8-K Filing with the SEC without the express written consent of the Subscriber. Neither the Company nor the Subscriber shall issue any press releases or any other public statements with respect to the transactions contemplated hereby; provided, however, that the Company shall be entitled, without the prior approval of the Subscriber, to make any press release or other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filing or (ii) as may be required by applicable law, rule or regulation (provided that in the case of clause (i) the Subscriber shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release). Notwithstanding the foregoing, the Company shall not publicly disclose the name of the Subscriber, or include the name of the Subscriber in any filing with the SEC or any regulatory agency, without the prior written consent of the Subscriber, except (i) for disclosure thereof in the 8-K Filing or Registration Statement or (ii) as required by law or regulations or any order of any court or other governmental agency, in which case the Company shall provide the Subscriber with prior notice of such disclosure.

6.10 Nothing in this Agreement shall create or be deemed to create any rights in any person or entity not a party to this Agreement, except for the Placement Agent and the holders of Registrable Securities.

6.11 Any pronoun herein shall include all genders and/or the plural or singular as appropriate from the context.

6.12 Each Subscriber acknowledges that it has independently evaluated the merits of the transactions contemplated by this Agreement, that it has independently determined to enter into the transactions contemplated hereby and thereby, that it is not relying on any advice from or evaluation by any other Subscriber, and that it is not acting in concert with any other Subscriber in making its purchase of securities hereunder or in monitoring its investment in the Company. The Subscribers and, to its knowledge, the Company agree that the Subscribers have not taken any actions that would deem such Subscribers to be members of a “group” for purposes of Section 13(d) of the Exchange Act, and the Subscribers have not agreed to act together for the purpose of acquiring, holding, voting or disposing of equity securities of the Company. Each Subscriber further acknowledges that BayStar Capital II, LP has retained Drinker Biddle & Reath LLP (“DB&R”) to act as its counsel in connection with the transactions contemplated by this Agreement and that DB&R has not acted as counsel for any of the other Subscribers in connection therewith and none of the other Subscribers have the status of a client of DB&R for conflict of interest or other purposes as a result thereof.

6.13 The representations and warranties of the Subscriber and the Company contained in Sections 1 and 2 of this Agreement shall survive the Closing for a period of one (1) year; provided, however, that nothing in this Section 6.13 shall prejudice the enforceability of any other provision of this Agreement.

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VII. CONFIDENTIAL INVESTOR QUESTIONNAIRE

7.1 The Subscriber represents and warrants that he, she or it comes within one category marked below, and that for any category marked, he, she or it has truthfully set forth, where applicable, the factual basis or reason the Subscriber comes within that category. ALL INFORMATION IN RESPONSE TO THIS SECTION VII WILL BE KEPT STRICTLY CONFIDENTIAL. The undersigned agrees to furnish any additional information which the Company deems necessary in order to verify the answers set forth below.

- Category A ___ The undersigned is an individual (not a partnership, corporation, etc.) whose individual net worth, or joint net worth with his or her spouse, presently exceeds \$1,000,000.
- Explanation. In calculating net worth you may include equity in personal property and real estate, including your principal residence, cash, short-term investments, stock and securities. Equity in personal property and real estate should be based on the fair market value of such property less debt secured by such property.
- Category B ___ The undersigned is an individual (not a partnership, corporation, etc.) who had an individual income in excess of \$200,000 in each of the two most recent years, or joint income with his or her spouse in excess of \$300,000 in each of those years (in each case including foreign income, tax exempt income and full amount of capital gains and losses but excluding any income of other family members and any unrealized capital appreciation) and has a reasonable expectation of reaching the same income level in the current year.
- Category C ___ The undersigned is a director or executive officer of the Company.
- Category D ___ The undersigned is a bank; a savings and loan association; insurance company; registered investment company; registered business development company; licensed small business investment company or "SBIC"; or employee benefit plan within the meaning of Title 1 of Employee Retirement Income Security Act or "ERISA" and (a) the investment decision is made by a plan fiduciary which is either a bank, savings and loan association, insurance company or registered investment advisor, or (b) the plan has total assets in excess of \$5,000,000 or is a self-directed plan with investment decisions made solely by persons that are accredited investors.

(describe entity)

Category E ___ The undersigned is a private business development company as defined in section 202(a)(22) of the Investment Advisors Act of 1940.

(describe entity)

Category F ___ The undersigned is either a corporation, partnership, Massachusetts business trust, or nonprofit organization within the meaning of Section 501(c)(3) of the Internal Revenue Code, in each case not formed for the specific purpose of acquiring the Securities and with total assets in excess of \$5,000,000.

(describe entity)

Category G ___ The undersigned is a trust with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the Securities where the purchase is directed by a “sophisticated person” as defined in Regulation 506(b)(2)(ii) under the Act.

Category H ___ The undersigned hereby certifies that it is an accredited investor because all of its equity owners are accredited investors. The Company, in its sole discretion, may request information regarding the basis on which such equity owners are accredited.

Category I ___ The undersigned hereby certifies that it is an accredited investor because it has total assets in excess of \$5,000,000 and was not formed for the specific purpose of acquiring the Securities.

Category J ___ The undersigned is not within any of the categories above and is therefore not an accredited investor.

The Company will notify a prospective Subscriber whether such Subscriber is eligible to purchase Securities pursuant to this Agreement (and the Company, in its sole discretion, retains the right to accept or reject all such purchases). The undersigned agrees that it will notify the Company at any time on or prior to the Closing Date in the event that the representations and warranties in this Investor Questionnaire shall cease to be true, accurate and complete.

7.2 SUITABILITY (please answer each question)

(a) For all Subscribers, please list types of prior investments:

(b) For all Subscribers, please state whether you have participated in other private placements before:

YES ___ NO ___

(c) If your answer to question (b) above was "YES", please indicate frequency of such prior participation in private placements of:

	Public Companies	Private Companies	Biotechnology, Pharmaceutical and Other Life Science Companies *
Frequently	—	—	—
Occasionally	—	—	—
Never	—	—	—

**indicate how many companies, whether public or private, are in the biotechnology, pharmaceutical or other life sciences sectors.*

(d) For trust, corporate, partnership and other institutional Subscribers, do you expect your total assets to significantly decrease in the foreseeable future?

YES ___ NO ___

(e) For all Subscribers, do you have any other investments or contingent liabilities which you reasonably anticipate could cause you to need sudden cash requirements in excess of cash readily available to you?

YES ___ NO ___

(f) For all Subscribers, are you familiar with the risk aspects and the non-liquidity of investments such as the securities for which you seek to subscribe?

YES ___ NO ___

(g) For all Subscribers, do you understand that there is no guarantee of financial return on this investment and that you run the risk of losing your entire investment?

YES ___ NO ___

7.3 MANNER IN WHICH TITLE IS TO BE HELD. (circle one)

- (a) Individual Ownership
- (b) Community Property
- (c) Joint Tenant with Right of Survivorship (both parties must sign)
- (d) Partnership*
- (e) Tenants in Common
- (f) Company*
- (g) Trust*
- (h) Other

*If Securities are being subscribed for by an entity, the attached Certificate of Signatory must also be completed.

7.4 NASD AFFILIATION.

Are you affiliated or associated with an NASD member firm (please check one)?

YES ___ NO ___

If yes, please describe:**

7.5 STOCK OWNERSHIP

Do you beneficially own any shares of the Company's Common Stock or any securities convertible into or exercisable for shares of the Company's Common Stock?

YES ___ NO ___

If yes, please describe, including number of shares:

7.6 COMPANY RELIANCE ON THIS QUESTIONNAIRE

The undersigned is informed of the significance to the Company of the foregoing representations and answers contained in this Section VII and such answers have been provided under the assumption that the Company and its counsel will rely on them.

SIGNATURE PAGE

Date Signed: _____, 2004

Number of shares of Series B Preferred Stock: _____

Multiplied by Offering Price per share:

x \$ 100.00

Equals subscription amount:

= _____

“INVESTOR” *(Name in which securities should be issued)*

By: _____

Print Name: _____

Title: _____

Address _____

City, State and Zip Code _____

Telephone-Business _____

Facsimile-Business _____

Tax ID # or Social Security # _____

***The attached Certificate of Signatory must also be completed.**

This Subscription Agreement is agreed to and accepted as of ___, 2004.

AKORN, INC.

By:

Name:

Title:

CERTIFICATE OF SIGNATORY

(To be completed if Securities are being subscribed for by an entity)

I, _____, am the _____ of _____ (the "Entity").

I certify that I am empowered and duly authorized by the Entity to execute and carry out the terms of the Subscription Agreement and to purchase and hold the Securities, and certify further that the Subscription Agreement has been duly and validly executed on behalf of the Entity and constitutes a legal and binding obligation of the Entity.

IN WITNESS WHEREOF, I have set my hand this ___ day of ___, 2004.

(Signature)

SCHEDULE 1.5

ADDITIONAL RISK FACTORS

1. **Additional Capital.** The Company may require funds in addition to those being raised in this Offering to operate and grow the Company's business. The Company may seek additional funds through public and private financing, including equity and debt offerings. However, adequate funds through the financial markets or from other sources may not be available when needed or on terms favorable to the Company or to the Subscriber. In addition, because the Company's Common Stock currently is traded on the OTC Bulletin Board®, the Company may experience further difficulty accessing the capital markets. Without sufficient additional funding, the Company may be required to delay, scale back or abandon some or all of the Company's product development, manufacturing, acquisition, licensing and marketing initiatives, or operations. Further, such additional financing, if obtained, may require the granting of rights, preferences or privileges senior to those of the Common Stock and Series B Preferred Stock and result in substantial dilution of the existing ownership interests of the Common Stockholders, Series B Preferred Stockholders and potentially the holders of warrants as well.
2. **Registration.** Despite the Company's reasonable best efforts under the terms of this Agreement, there can be no assurance that any registration statement filed with respect to the Securities will become or remain effective. In addition, there is no assurance regarding the price for which the Securities may be sold or that there will be buyers for the Securities offered for sale under such a registration statement. Therefore, the Subscriber may bear the economic risk of the Subscriber's investment for an indefinite period of time and may not be able to sell the Securities at any price on the open market or otherwise.
3. **Limited market for Common Stock and no established market for the Series B Preferred Stock and Warrants.** The Common Stock is not listed on any exchange or on the Nasdaq Stock Market®, although it is quoted on the OTC Bulletin Board®. We are in the process of seeking a listing on an exchange for our Common Stock. Currently, there is no market for the Series B Preferred Stock and the Warrants. We do not expect to qualify for or seek such listing for the Warrants in the foreseeable future. There can be no assurance that you will be able to sell your shares of Series B Preferred Stock or Warrants, or the Common Stock issuable upon conversion or exercise, respectively, at any time in the future or at all or that a more active trading market will develop in the foreseeable future. In addition, the price at which you may be able to sell is very unpredictable because there are very few trades in the Common Stock. Because the Common Stock is so thinly traded, a large block of shares traded can lead to a dramatic fluctuation in the share price.
4. **Concentrated ownership of Common Stock creates a risk of sudden changes in our share price.** The sale by any of our large shareholders of a significant portion of that shareholder's holdings could have a material adverse effect on the market price of the Common Stock. In addition, the issuance of shares of the Series B Preferred Stock and their subsequent conversion into Common Stock in connection with this offering would have the immediate effect of increasing the public float of the Common Stock. Such increase may cause the market price of our Common Stock to decline or fluctuate significantly.

5. Future Dilution. If the price per share of the Company's Common Stock at the time of exercise or conversion of any preferred stock, warrants, options, convertible subordinated debt, or any other convertible securities (collectively, "Convertible Securities"), including all of the Convertible Securities set forth in the Company's SEC Filings, is in excess of the various exercise or conversion prices of such Convertible Securities, exercise or conversion of such Convertible Securities would have a dilutive effect on the Company's Common Stock. The amount of such dilution, however, cannot currently be determined as it would depend on the difference between the stock price and the price at which the Convertible Securities were exercised or converted at the time of such exercise or conversion.

6. General. The Subscriber should be aware that the risk factors of the Company set forth in this Schedule 1.5, the Agreement and the Company's SEC Filings, including without limitation the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2003, are in no way inclusive of all the potential risks associated with the Company. The Subscriber should not rely upon the disclosures contained herein in any decision to provide financing to the Company, but should complete its own independent investigation as to the suitability and as to the risk and potential loss involved with providing financing to the Company.

EXHIBIT A
AKORN, INC.
NOTICE OF EXERCISE UNDER
SECTION 5.2(B) OF THE
SUBSCRIPTION AGREEMENT DATED AUGUST __, 2004

To AKORN, INC.:

The undersigned holder ("Holder") of shares of Series B 6% Participating Convertible Preferred Stock (the "Series B Preferred Stock") hereby irrevocably elects to exercise the Holder's right pursuant to Section 5.2(b) of the above referenced Subscription Agreement, to sell ___ shares of Series B Preferred Stock represented by certificate no. ___ (the "Stock Certificate") to the Company for the price of \$___ in cash, which sum represents the aggregate purchase price for such shares of Series B Preferred Stock (as determined under Section 5.2(b) of the Subscription Agreement) to which this Notice of Exercise relates. The Stock Certificate is enclosed with this notice, duly endorsed in blank.

HOLDER:

[Name of holder as specified on the face of the stock certificate]

[Signature of person signing on behalf of holder]

[Print name and title (if any) of person signing on behalf of holder (if different) {i.e. "John Smith, President"}]

[Address]

[Date]