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UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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FORM 10-Q

[X] QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934  
FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2003

[ ] TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934  
FOR THE TRANSITION PERIOD FROM ----- TO -----

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COMMISSION FILE NUMBER: 0-13976

AKORN, INC.  
(Exact Name of Registrant as Specified in its Charter)

LOUISIANA  
(State or Other Jurisdiction of  
Incorporation or Organization)

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

2500 MILLBROOK DRIVE  
BUFFALO GROVE, ILLINOIS  
(Address of Principal Executive Offices)

60089  
(Zip Code)

(847) 279-6100  
(Registrant's telephone number)

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Indicate by check mark whether the Registrant (1) has filed all reports  
required to be filed by Section 13 or 15(d) of the Securities Exchange Act of  
1934 during the preceding 12 months (or for such shorter period that the  
registrant was required to file such reports), and (2) has been subject to such  
filing requirements for the past 90 days.

Yes [ ] No [X]

Indicate by check mark whether the Registrant is an accelerated filer (as  
defined in Exchange Act Rule 12b-2).

Yes [ ] No [X]

The financial statements included in this Form 10-Q have not been reviewed  
by independent public accountants in accordance with Rule 10-01 (d) of  
Regulation S-X. See explanatory Note on Page 2.

At November 10, 2003 there were 19,821,046 shares of common stock, no par  
value, outstanding.

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EXPLANATORY NOTE

On April 24, 2003, Deloitte and Touche LLP ("Deloitte") notified the  
Company that it would decline to stand for re-election as the Company's  
independent accountants after completion of the audit of the Company's  
consolidated financial statements as of and for the year ending December 31,  
2002. Deloitte completed its audit and delivered its auditors' report on May 20,  
2003, and has advised the Company that the client-auditor relationship between  
the Company and Deloitte has ceased. On October 22, 2003, the Company engaged  
BDO Siedman, LLP as the Company's principal accountants to audit the financial  
statements of the Company for its fiscal year ending December 31, 2003 and to  
review the Company's financial statements for the fiscal quarters ended March

31, June 30, and September 30, 2003. BDO Siedman has informed the Company that it will not be able to complete the review of the Company's quarterly financial statements until December 2003. As a result, independent accountants have not reviewed the financial statements and notes thereto included in this Form 10-Q in accordance with rule 10-01(d) of Regulation S-X and this Form 10-Q does not comply with other requirements of Section 13(a) of the Securities and Exchange Act of 1934 ("Exchange Act") relating to independent accountants or auditors. The Company believes that the unaudited financial statements and notes to the consolidated financial statements included therein contain all of the information and necessary adjustments for a fair presentation of these financial statements and accompanying notes.

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AKORN, INC.  
CONDENSED CONSOLIDATED BALANCE SHEETS  
IN THOUSANDS  
(UNAUDITED)

	SEPTEMBER 30, 2003	DECEMBER 31, 2002
	-----	-----
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents .....	\$ 304	\$ 364
Trade accounts receivable (less allowance for doubtful accounts of \$520 and \$1,200) ...	3,167	1,421
Inventory .....	8,714	10,401
Deferred income taxes .....	--	--
Income taxes recoverable .....	--	670
Prepaid expenses and other current assets .....	1,278	383
	-----	-----
TOTAL CURRENT ASSETS .....	13,463	13,239
OTHER ASSETS		
Intangibles, net .....	13,094	14,142
Investment in Novadaq Technologies, Inc. ....	713	713
Deferred income taxes .....	--	--
Other .....	130	130
	-----	-----
TOTAL OTHER ASSETS .....	13,937	14,985
PROPERTY, PLANT AND EQUIPMENT, NET .....	34,226	35,314
	-----	-----
TOTAL ASSETS .....	\$ 61,626	\$ 63,538
	=====	=====
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES		
Current installments of long-term debt .....	\$ 6,120	\$ 35,859
Trade accounts payable .....	7,232	5,756
Accrued compensation .....	575	836
Accrued expenses and other current liabilities..	866	1,352
	-----	-----
TOTAL CURRENT LIABILITIES .....	14,793	43,803
LONG-TERM DEBT .....	40,575	7,799
OTHER LONG-TERM LIABILITIES .....	--	584
	-----	-----
TOTAL LIABILITIES .....	55,368	52,186
COMMITMENTS AND CONTINGENCIES		
SHAREHOLDERS' EQUITY		
Common stock .....	26,866	26,866
Accumulated deficit .....	(20,608)	(15,514)
	-----	-----
TOTAL SHAREHOLDERS' EQUITY .....	6,258	11,352
	-----	-----
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY ..	\$ 61,626	\$ 63,538
	=====	=====

See notes to condensed consolidated financial statements.

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AKORN, INC.  
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
IN THOUSANDS, EXCEPT PER SHARE DATA  
(UNAUDITED)

	THREE MONTHS ENDED SEPTEMBER 30,		NINE MONTHS ENDED SEPTEMBER 30,	
	2003	2002	2003	2002
	-----	-----	-----	-----
Revenues .....	\$ 13,498	\$ 12,121	\$ 35,120	\$ 39,729
Cost of sales .....	9,274	7,665	24,518	22,558

GROSS PROFIT .....	4,224	4,456	10,602	17,171
Selling, general and administrative expenses...	4,151	5,245	12,273	16,014
Provision, net of recoveries, for bad debts....	21	370	(267)	(30)
Amortization of intangibles .....	349	359	1,047	1,057
Research and development expenses .....	271	498	1,107	1,480
TOTAL OPERATING EXPENSES .....	4,792	6,472	14,160	18,521
OPERATING INCOME (LOSS) .....	(568)	(2,016)	(3,558)	(1,350)
Interest expense .....	(626)	(764)	(1,882)	(2,477)
Interest and other income (expense), net .....	--	2	--	2
INTEREST EXPENSE AND OTHER .....	(626)	(762)	(1,882)	(2,475)
INCOME (LOSS) BEFORE INCOME TAXES .....	(1,194)	(2,778)	(5,440)	(3,825)
Income tax provision (benefit) .....	--	6,609	(171)	6,193
NET INCOME (LOSS) .....	\$ (1,194)	\$ (9,387)	\$ (5,269)	\$ (10,018)
NET INCOME (LOSS) PER SHARE:				
BASIC .....	\$ (0.06)	\$ (0.48)	\$ (0.27)	\$ (0.51)
DILUTED .....	\$ (0.06)	\$ (0.48)	\$ (0.27)	\$ (0.51)
SHARES USED IN COMPUTING NET LOSS PER SHARE:				
BASIC .....	19,754	19,610	19,721	19,567
DILUTED .....	19,754	19,610	19,721	19,567

See notes to condensed consolidated financial statements.

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AKORN, INC.  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
IN THOUSANDS  
(UNAUDITED)

	NINE MONTHS ENDED SEPTEMBER 30,	
	2003	2002
OPERATING ACTIVITIES		
Net income (loss) .....	\$ (5,269)	\$ (10,018)
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization .....	3,376	3,396
Deferred income taxes .....	--	5,919
Write-down of long-lived assets .....	--	2,362
Amortization of debt discounts .....	546	389
Changes in operating assets and liabilities:		
Accounts receivable .....	(1,745)	2,306
Income taxes recoverable .....	663	5,874
Inventory .....	1,687	(2,467)
Prepaid expenses and other current assets .....	(890)	(925)
Trade accounts payable .....	1,471	2,132
Accrued compensation .....	(260)	98
Income taxes payable .....	--	--
Accrued expenses and other liabilities .....	(505)	(1,615)
NET CASH PROVIDED BY OPERATING ACTIVITIES	(927)	7,451
INVESTING ACTIVITIES		
Purchases of property, plant and equipment .....	(1,302)	(4,645)
Cash received for intangibles .....		125
NET CASH (USED IN) INVESTING ACTIVITIES .....	(1,302)	(4,520)
FINANCING ACTIVITIES		
Repayment of long-term debt .....	(129)	(5,802)
Borrowings under bank credit agreement .....	2,235	--
Proceeds from employee stock purchase plan/exercise of stock options .....	63	387

NET CASH PROVIDED BY FINANCING ACTIVITIES .....	2,169	(5,415)
(DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS .....	(60)	(2,484)
Cash and cash equivalents at beginning of period .....	364	5,355
	-----	-----
CASH AND CASH EQUIVALENTS AT END OF PERIOD .....	\$ 304	\$ 2,871
	=====	=====
Amount paid for interest		
(net of capitalized interest) .....	\$ 699	\$ 2,474
Amount paid (recovered) for income taxes .....	\$ (834)	\$ (5,609)

See notes to condensed consolidated financial statements.

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AKORN, INC.  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(UNAUDITED)

NOTE A - BASIS OF PRESENTATION

Business: Akorn, Inc. ("Akorn" or the "Company") manufactures and markets diagnostic and therapeutic pharmaceuticals in specialty areas such as ophthalmology, rheumatology, anesthesia and antidotes, among others. Customers include physicians, optometrists, wholesalers, group purchasing organizations and other pharmaceutical companies.

Consolidation: The accompanying unaudited condensed consolidated financial statements include the accounts of Akorn, Inc. and its wholly owned subsidiary (the "Company"). Intercompany transactions and balances have been eliminated in consolidation. These financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America for interim financial information and accordingly do not include all the information and footnotes required by accounting principles generally accepted in the United States of America for complete financial statements.

Adjustments: In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation have been included. Operating results for the three and nine-month periods ended September 30, 2003 are not necessarily indicative of the results that may be expected for a full year. For further information, refer to the consolidated financial statements and footnotes for the year ended December 31, 2002 included in the Company's Annual Report on Form 10-K.

As discussed in Note A to the Company's consolidated financial statements for the year ended December 31, 2002 and for the Company's condensed consolidated financial statements for the periods ending March 31, 2003 and June 30, 2003, the Company's losses from operations in recent years and working capital deficiencies, together with the need to refinance or extend its senior debt and successfully resolve its ongoing compliance matters with the Food and Drug Administration ("FDA"), raised substantial doubt about the Company's ability to continue as a going concern.

On October 7, 2003, the Company consummated a transaction with a group of investors that resulted in the extinguishment of the Company's then outstanding senior bank debt in the amount of approximately \$37,801,000 in exchange for shares of the Company's convertible preferred stock, warrants to purchase shares of the Company's common stock, subordinated promissory notes in the aggregate amount of \$2,767,139 and a new credit facility under which approximately \$7,000,000 was outstanding as of the date of the transaction, \$5,473,862 of which was paid to the investors in the transaction. For more information regarding this transaction, see Note O - "Subsequent Events" - to the Condensed Consolidated Financial Statements. As a result, the Company has addressed its working capital deficiencies and the need to refinance its debt on a long-term basis. The Company also has developed and is continuing to implement a plan for comprehensive corrective actions to address FDA compliance matters at its Decatur, Illinois facility. For more information on the Company's ongoing FDA compliance matters, see Note M - "Legal Proceedings" - to the Condensed Consolidated Financial Statements.

NOTE B - USE OF ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires

management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ materially from those estimates. Significant estimates and assumptions relate to the allowance for doubtful accounts, the allowance for chargebacks, the allowance for rebates, the reserve for slow-moving and obsolete inventory, the allowance for product returns, the carrying value of intangible assets and the carrying value of deferred tax assets.

#### NOTE C - REVENUE RECOGNITION

The Company recognizes product sales for its ophthalmic and injectable business segments upon the shipment of goods for customers whose terms are FOB shipping point. The Company has several customers whose terms are FOB destination point and recognizes revenue upon delivery of the product to these customers. Revenue is recognized when all obligations of the Company have been fulfilled and collection of the related receivable is probable. Provision for estimated chargebacks, rebates, discounts and product returns is made at the time of sale and is analyzed and adjusted, if necessary, at each balance sheet date.

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The contract services segment, which produces products for third party customers, based upon their specification, at a pre-determined price, also recognizes sales upon the shipment of goods or upon delivery of the product as appropriate. Revenue is recognized when all obligations of the Company have been fulfilled and collection of the related receivable is probable.

Royalty revenue is recognized in the period to which such revenue relates based upon when the Company receives notification (monthly or quarterly) from the counterparty that such counterparty has sold product for which Akorn is entitled to a royalty.

#### NOTE D - ACCOUNTS RECEIVABLE ALLOWANCES

The nature of the Company's business inherently involves, in the ordinary course, significant amounts and substantial volumes of accounting activity (i.e., transactions and estimates) relating to allowances for product returns, chargebacks, rebates and discounts given to customers. This is a natural circumstance of the pharmaceutical industry and not specific to the Company and inherently lengthens the collection process. Depending on the product, the end-user customer, the specific terms of national supply contracts and the particular arrangements with the Company's wholesaler customers, certain rebates, chargebacks and other credits are deducted from the Company's accounts receivable. The process of claiming these deductions depends on wholesalers reporting to the Company the amount of deductions that were earned under the respective terms with end-user customers. The amount of the deduction (if any) depends on the identity of the end-user customer and the specific pricing arrangements that Akorn has with that customer. This process can lead to "partial payments" against outstanding invoices as the wholesalers take the claimed deductions at the time of payment.

#### Allowance for Chargebacks and Rebates

The Company maintains allowances for chargebacks and rebates. These allowances are reflected as a reduction of accounts receivable.

The Company enters contractual agreements with certain third parties such as hospitals and group-purchasing organizations to sell certain products at predetermined prices. The parties have elected to have these contracts administered through wholesalers. When a wholesaler sells products to one of the third parties that is subject to a contractual price agreement, the difference between the price to the wholesaler and the price under contract is charged back to the Company by the wholesaler. The Company tracks sales and submitted chargebacks by product number for each wholesaler. Utilizing this information, the Company estimates a chargeback percentage for each product. The Company reduces gross sales and increases the chargeback allowance by the estimated chargeback amount for each product sold to a wholesaler. The Company reduces the chargeback allowance when it processes a request for a chargeback from a wholesaler. Actual chargebacks processed can vary materially from period to period.

Management obtains wholesaler inventory reports to aid in analyzing the reasonableness of the chargeback allowance. The Company assesses the reasonableness of its chargeback allowance by applying the product chargeback percentage based on historical activity to the quantities of inventory on hand per the wholesaler inventory reports.

Similarly, the Company maintains an allowance for rebates related to contract and other programs with certain customers. The rebate allowance also reduces gross sales and accounts receivable by the amount of the estimated rebate amount when the Company sells its products to its rebate-eligible customers. Rebate percentages vary by product and by volume purchased by each eligible customer. The Company tracks sales by product number for each eligible customer and then applies the applicable rebate percentage, using both historical trends and actual experience to estimate its rebate allowance. The Company reduces gross sales and increases the rebate allowance by the estimated rebate amount for each product sold to an eligible customer. The Company reduces the rebate allowance when it processes a customer request for a rebate. At each balance sheet date, the Company evaluates the allowance against actual rebates processed and such amount can vary materially from period to period.

The recorded allowances reflect the Company's current estimate of the future chargeback and rebate liability to be paid or credited to the wholesaler under the various contracts and programs. For the three-month periods ended September 30, 2003 and 2002, the Company recorded chargeback and rebate expense of \$4,332,000, and \$4,693,000, respectively. For the nine months ended September 30, 2003 and 2002, the Company recorded chargeback and rebate expense of \$10,637,000, and \$12,247,000, respectively. The allowance for chargebacks and rebates was \$5,407,000 and \$4,302,000 as of September 30, 2003 and December 31, 2002, respectively.

#### Allowance for Product Returns

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The Company also maintains an allowance for estimated product returns. This allowance is reflected as a reduction of accounts receivable balances. The Company evaluates the allowance balance against actual returns processed. In addition to considering in process product returns and assessing the potential implications of historical product return activity, the Company also considers the wholesaler's inventory information to assess the magnitude of unconsumed product that may result in a product return to the Company in the future. Actual returns processed can vary materially from period to period. For the three-month periods ending September 30, 2003 and 2002 the Company recorded a provision for product returns of \$453,000, and \$790,000, respectively. For the nine-month periods ending September 30, 2003 and 2002 the Company recorded a provision for product returns of \$1,790,000, and \$1,822,000, respectively. The allowance for potential product returns was \$1,459,000 and \$1,166,000 at September 30, 2003 and December 31, 2002, respectively.

#### Allowance for Doubtful Accounts

The Company maintains an allowance for doubtful accounts, which reflects trade receivable balances owed to the Company that are believed to be uncollectible. This allowance is reflected as a reduction of accounts receivable balances. In estimating the allowance for doubtful accounts, the Company has:

- Identified the relevant factors that might affect the accounting estimate for allowance for doubtful accounts, including: (a) historical experience with collections and write-offs; (b) credit quality of customers; (c) the interaction of credits being taken for discounts, rebates, allowances and other adjustments; (d) balances of outstanding receivables, and partially paid receivables; and (e) economic and other exogenous factors that might affect collectibility (e.g., bankruptcies of customers, factors that affect particular distribution channels, etc.).
- Accumulated data on which to base the estimate for allowance for doubtful accounts, including: (a) collections and write-offs data; (b) information regarding current credit quality of customers; and (c) other information such as buying patterns and payment patterns, particularly in respect of major customers.
- Developed assumptions reflecting management's judgments as to the most likely circumstances and outcomes, regarding, among other matters: (a)

collectibility of outstanding balances relating to "partial payments;" (b) the ability to collect items in dispute (or subject to reconciliation) with customers; and (c) economic factors that might affect collectibility of outstanding balances - based upon information available at the time.

For the three-month periods ending September 30, 2003 and 2002, the Company recorded a provision, net of recoveries, for doubtful accounts of \$21,000 and \$370,000, respectively. For the nine-month periods ending September 30, 2003 and 2002, the Company recorded a provision, net of recoveries, for doubtful accounts of (\$267,000) and (\$30,000), respectively. The allowance for doubtful accounts was \$520,000 and \$1,200,000 as of September 30, 2003 and December 31, 2002, respectively. As of September 30, 2003, the Company had a total of \$3,439,000 of past due gross accounts receivable, of which \$118,000 was over 60 days past due. The Company performs monthly a detailed analysis of the receivables due from its wholesaler customers and provides a specific reserve against known uncollectible items for each of the wholesaler customers. The Company also includes in the allowance for doubtful accounts an amount that it estimates to be uncollectible for all other customers based on a percentage of the past due receivables. The percentage reserved increases as the age of the receivables increases. Of the recorded allowance for doubtful accounts of \$520,000, the portion related to the wholesaler customers is \$415,000 with the remaining \$105,000 reserve for all other customers.

#### Allowance for Discounts

The Company maintains an allowance for discounts, which reflects discounts available to certain customers based on agreed upon terms of sale. This allowance is reflected as a reduction of accounts receivable. The Company evaluates the allowance balance against actual discounts taken. For the three-month periods ending September 30, 2003 and 2002, the Company recorded a provision for discounts of \$230,000 and \$246,000, respectively. For the nine months ending September 30, 2003 and 2002, the Company recorded a provision for discounts of \$588,000 and \$759,000, respectively. The allowance for discounts was \$184,000 and \$172,000 as of September 30, 2003 and December 31, 2002, respectively.

#### NOTE E - INVENTORY

The components of inventory are as follows (in thousands):

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	SEPTEMBER 30, 2003	DECEMBER 31, 2002
	-----	-----
Finished goods .....	\$ 3,954	\$ 3,460
Work in process .....	2,113	1,877
Raw materials and supplies..	2,647	5,064
	-----	-----
	\$ 8,714	\$ 10,401
	=====	=====

Inventory at September 30, 2003 and December 31, 2002 is reported net of reserves for slow-moving, unsaleable and obsolete items of \$1,118,000 and \$1,206,000, respectively, primarily related to finished goods. For the three and nine-month periods ended September 30, 2003, the Company recorded a provision of \$263,000 and \$671,000, respectively. For the nine months ended September 30, 2002, the Company recorded a provision of \$493,000. There was no expense recorded in the third quarter of 2002.

#### NOTE F - INTANGIBLE ASSETS

Intangible assets consist of product licenses that are capitalized and amortized on the straight-line method over the lives of the related license periods or the estimated life of the acquired product, which range from 17 months to 18 years. The Company assesses the impairment of intangibles based on several factors, including estimated fair market value and anticipated cash flows. The Company has no goodwill or other similar asset with indefinite lives currently recorded on its balance sheet. A summary of the Company's acquired



amortizable intangible assets as of September 30, 2003 is as follows (in thousands):

AS OF SEPTEMBER 30, 2003		
GROSS CARRYING AMOUNT	ACCUMULATED AMORTIZATION	NET CARRYING AMOUNT
Product Licenses....	\$ 22,685	\$ 9,591
		\$ 13,094

The amortization expense of the above-listed acquired intangible assets for each of the five years ending December 31, 2007 will be as follows (in thousands):

For the year ended 12/31/03 (a).....	\$ 1,419
For the year ended 12/31/04.....	1,404
For the year ended 12/31/05.....	1,357
For the year ended 12/31/06.....	1,304
For the year ended 12/31/07.....	1,281

(a) Amortization expense for the three months and nine months ended September 30, 2003 amounted to \$349,000 and \$1,047,000, respectively.

NOTE G - PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment consists of the following (in thousands):

	SEPTEMBER 30, 2003	DECEMBER 31, 2002
Land.....	\$ 396	\$ 396
Buildings and leasehold improvements....	8,890	8,890
Furniture and equipment.....	27,741	27,390
Automobiles.....	55	55
	37,082	36,731
Accumulated depreciation.....	(21,518)	(19,236)
	15,564	17,495
Construction in progress.....	18,662	17,819
	\$ 34,226	\$ 35,314

Construction in progress primarily represents capital expenditures related to the Company's Lyophilization project that, upon completion, is expected to enable the Company to perform processes in-house that are currently being performed by a sub-contractor. The Company capitalized interest expense related to the Lyophilization project of \$307,000 and \$303,000 during the three-month periods ended September 30, 2003 and 2002, respectively. For the nine-month periods ended September 30, 2003 and 2002, the Company capitalized interest expense related to the Lyophilization project of \$909,000 and \$847,000, respectively.

NOTE H - FINANCING ARRANGEMENTS

In December 1997, the Company entered into a \$15,000,000 revolving Credit Agreement with The Northern Trust Company, which was increased to \$25,000,000 on June 30, 1998 and to \$45,000,000 on December 28, 1999. This Credit Agreement was

secured by substantially all of the assets of the Company and its subsidiaries and contained a number of restrictive covenants. There were outstanding borrowings of \$37,801,000 as of September 30, 2003 and \$39,200,000 as of September 30, 2002. The interest rate as of September 30, 2003 was 7.25%.

As previously disclosed, the Company went into default under the Northern Trust Credit Agreement in 2002 and thereafter operated under an agreement under which Northern Trust would agree to forbear from exercising its remedies (the "Forbearance Agreement") and the Company acknowledged its then-current default. The Forbearance Agreement provided a second line of credit that originally allowed the Company to borrow the lesser of (i) the difference between the Company's outstanding indebtedness to the senior lender and \$39,200,000, and (ii) \$1,750,000, to fund the Company's day-to-day operations. The Forbearance Agreement was extended on numerous occasions throughout the first and second quarters of 2003.

On July 3, 2003, Northern Trust extended the expiration date of the Forbearance Agreement from June 30, 2003 until July 31, 2003 and agreed to make up to an additional \$1,000,000 available to the Company under its current line of credit, increasing the maximum amount available under the line of credit from \$1,750,000 to \$2,750,000. Thereafter, Northern Trust agreed to further extensions to the Forbearance Agreement, the most recent of which was on September 22, 2003 and extended the expiration date of the Forbearance Agreement until October 10, 2003.

On October 7, 2003, a group of investors (the "Investors") purchased all of the Company's then outstanding senior bank debt from The Northern Trust Company and exchanged such debt with the Company (the "Exchange Transaction") for (i) 257,172 shares of Series A 6.0% Participating Convertible Preferred Stock of the Company, (ii) subordinated promissory notes in the aggregate principal amount of \$2,767,139.03 (the "2003 Subordinated Notes") issued by the Company to (a) The John N. Kapoor Trust dtd 9/20/89 (the "Kapoor Trust"), the sole trustee and sole beneficiary of which is Dr. John N. Kapoor, the Company's Chairman of the Board of Directors and the holder of a significant stock position in the Company, (b) Arjun Waney, a newly-elected director and the holder of a significant stock position in the Company, and (c) Argent Fund Management Ltd., for which Mr. Waney serves as Chairman and Managing Director and 51% of which is owned by Mr. Waney, (iii) warrants to purchase an aggregate of 8,572,400 shares of the Company's common stock with an exercise price of \$1.00 per share, and (iv) \$5,473,862 in cash from the proceeds of the term loan under the New Credit Facility described in the next paragraph. The Company also issued to the holders of the 2003 Subordinated Notes warrants to purchase an aggregate of 276,714 shares of common stock with an exercise price of \$1.10 per share. As a result of the Exchange Transaction, the Company will record a gain in the fourth quarter of 2003 of approximately \$3,800,000 due to the extinguishment of the senior bank debt. This gain will be reduced by the transaction costs related to the debt extinguishment.

Simultaneously with the consummation of the Exchange Transaction, the Company entered into a credit agreement with LaSalle Bank National Association ("LaSalle Bank") providing the Company with a \$7,000,000 term loan and a revolving line of credit of up to \$5,000,000 to provide for working capital needs (collectively, the "New Credit Facility") secured by substantially all of the assets of the Company and its subsidiaries. The obligations of the Company under the New Credit Facility have been guaranteed by the Kapoor Trust and Arjun Waney. In exchange for this guaranty, the Company issued additional warrants to purchase 880,000 and 80,000 shares of common stock to the Kapoor Trust and Arjun Waney, respectively, and has agreed to issue to each of them, on each anniversary of the date of the consummation of the Exchange Transaction, warrants to purchase an additional number of shares of common stock equal to 0.08 multiplied by the principal dollar amount of the Company's indebtedness then guaranteed by them under the New Credit Facility. The warrants issued in exchange for these guarantees have an exercise price of \$1.10 per share.

As a result of the Exchange Transaction, the Company has classified \$6,120,000 of the outstanding \$37,801,000 debt owed to The Northern Trust Company as of September 30, 2003 as short-term debt. The remaining \$31,681,000 is classified as long-term debt.

The New Credit Facility with LaSalle Bank consists of a \$5,500,000 term loan A, a \$1,500,000 term loan B (collectively, the "Term Loans") as well as a revolving line of credit of up to \$5,000,000 (the "Revolver") secured by substantially all of the assets of the Company and its subsidiaries. The New Credit Facility matures on October 7, 2005. The Term Loans bear interest at prime plus 1.75% and require principal payments of \$195,000 per month commencing

October 31, 2003, with the payments first to be applied to term loan B. The Revolver bears interest at prime plus 1.50%. Availability under the Revolver is determined by the sum of (i) 80% of eligible accounts receivable, (ii) 30% of raw material, finished goods and component inventory excluding packaging items, not to exceed \$2.5 million and (iii) the difference between 90% of the forced liquidation value of machinery and equipment (\$4,092,000) and the sum of \$1,750,000 and the outstanding balance under term loan B. The New Credit Facility contains certain restrictive covenants

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including but not limited to certain financial covenants such as minimum EDITDA levels, Fixed Charge Coverage Ratios, Senior Debt to EBITDA ratios and Total Debt to EBITDA ratios.

On July 12, 2001, the Company entered into a \$5,000,000 subordinated debt transaction with the Kapoor Trust. The transaction is evidenced by a Convertible Bridge Loan and Warrant Agreement (the "Trust Loan Agreement") in which the Kapoor Trust agreed to provide two separate tranches of funding in the amounts of \$3,000,000 ("Tranche A" which was received on July 13, 2001) and \$2,000,000 ("Tranche B" which was received on August 16, 2001). As part of the consideration provided to the Kapoor Trust for the subordinated debt, the Company issued the Kapoor Trust two warrants which allow the Kapoor Trust to purchase 1,000,000 shares of common stock at a price of \$2.85 per share and another 667,000 shares of common stock at a price of \$2.25 per share. The exercise price for each warrant represented a 25% premium over the share price at the time of the Kapoor Trust's commitment to provide the subordinated debt. All unexercised warrants expire on December 20, 2006.

Under the terms of the Trust Loan Agreement, the subordinated debt bears interest at prime plus 3%, but interest payments are currently prohibited under the terms of the subordination arrangements described below. The convertible feature of the Trust Loan Agreement, as amended, allows for conversion of the subordinated debt plus interest into common stock of the Company, at a price of \$2.28 per share of common stock for Tranche A and \$1.80 per share of common stock for Tranche B.

The Company, in accordance with APB Opinion No. 14, recorded the subordinated debt under the Trust Loan Agreement such that the convertible debt and warrants have been assigned independent values. The fair value of the warrants was estimated on the date of grant using the Black-Scholes option pricing model with the following assumptions: (i) dividend yield of 0%, (ii) expected volatility of 79%, (iii) risk free rate of 4.75%, and (iv) expected life of 5 years. As a result, the Company assigned a value of \$1,516,000 to the warrants and recorded this amount as additional paid in capital. In accordance with EITF Abstract No. 00-27, the Company has also computed and recorded a value related to the "intrinsic" value of the convertible debt. This calculation determines the value of the embedded conversion option within the debt that has become beneficial to the owner as a result of the application of APB Opinion No. 14. This value was determined to be \$1,508,000 and was recorded as additional paid in capital. The remaining \$1,976,000 was recorded as long-term debt. The resultant debt discount of \$3,024,000, equivalent to the value assigned to the warrants and the "intrinsic" value of the convertible debt, is being amortized and charged to interest expense over the life of the subordinated debt.

In December 2001, the Company entered into a \$3,250,000 five-year loan with NeoPharm, Inc. ("NeoPharm") to fund the Company's efforts to complete its lyophilization facility located in Decatur, Illinois. Prior to its amendment and restatement in connection with the Exchange Transaction, the Promissory Note, dated December 20, 2001 (the "NeoPharm Promissory Note"), provided for interest to accrue at the initial rate of 3.6% and be reset quarterly based upon NeoPharm's average return on its cash and readily tradable long and short-term securities during the previous calendar quarter. The NeoPharm Promissory Note also provided for all principal and accrued interest to be due and payable on or before maturity on December 20, 2006, and required the Company to use the proceeds of the loan solely to validate and complete the lyophilization facility located in Decatur, Illinois. The NeoPharm Promissory Note was executed in conjunction with a Processing Agreement that provides NeoPharm with the option of securing at least 15% of the capacity of the Company's lyophilization facility each year. As of September 30, 2003, the Company was in default under the NeoPharm Promissory Note as a result of its failure to remove all FDA warning letter sanctions related to the Company's Decatur, Illinois facility by June 30, 2003. Dr. John N. Kapoor, the Chairman of the Company's Board of Directors, is also chairman of NeoPharm and holds a substantial stock position

in NeoPharm as well as in the Company.

In connection with the Exchange Transaction, NeoPharm waived all existing defaults under the NeoPharm Promissory Note and the Company and NeoPharm entered into an Amended and Restated Promissory Note dated October 7, 2003 (the "Amended NeoPharm Note") and as such the outstanding amount due under the Amended NeoPharm Note is classified as long-term debt. Interest under the Amended NeoPharm Note accrues at 1.75% above LaSalle Bank's prime rate, but interest payments are currently prohibited under the terms of the subordination arrangements described below. The Amended NeoPharm Note also requires the Company to make quarterly payments of \$150,000 beginning on the last day of the calendar quarter during which all indebtedness under the New Credit Facility has been paid. All remaining amounts owed under the Amended NeoPharm Note are payable at maturity on December 20, 2006. The NeoPharm subordinated debt is subordinated to the Company's bank debt under the New Credit Facility and is senior to the Company's debt to the Kapoor Trust and to the 2003 Subordinated Notes.

Contemporaneous with the completion of the NeoPharm Promissory Note between the Company and NeoPharm, the Company entered into an agreement with the Kapoor Trust, which amended the Trust Loan Agreement. The amendment extended the maturity of the Trust Loan Agreement from July 12, 2004 to terminate concurrently with the NeoPharm Promissory Note on December 20, 2006. The amendment also made it possible for the Kapoor Trust to convert the interest accrued on the \$3,000,000 tranche, as well as interest on the \$2,000,000 tranche after the original maturity of the Tranche B note, into common stock of the Company. Previously,

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the Kapoor Trust could only convert the interest accrued on the \$2,000,000 tranche through the original maturity of the Tranche B note. As of September 30, 2003, the Company was in default under the Trust Loan Agreement as a result of a cross-default to the NeoPharm Promissory Note.

In connection with the Exchange Transaction, the Kapoor Trust waived all existing defaults under the Trust Loan Agreement and the Company and the Kapoor Trust entered into an amendment to the Trust Loan Agreement and as such the outstanding amount due under the Trust Loan Agreement is classified as long-term debt. That amendment did not change the interest rate or the maturity date of the loans made under the Trust Loan Agreement. The debt owed under the Trust Loan Agreement is subordinated to the Company's bank debt under the New Credit Facility, the subordinated debt under the Amended NeoPharm Note and the 2003 Subordinated Notes issued in connection with the Exchange Transaction.

As part of the Exchange Transaction, the Company issued the 2003 Subordinated Notes to the Kapoor Trust, Arjun Waney and Argent Fund Management, Ltd. The 2003 Subordinated Notes mature on April 7, 2006 and bear interest at prime plus 1.75%, but interest payments are currently prohibited under the terms of the subordination arrangements described below. The 2003 Subordinated Notes are subordinated to the New Credit Facility and the Amended NeoPharm Note but senior to Trust Loan Agreement with the Kapoor Trust. The Company also issued to the holders of the 2003 Subordinated Notes warrants to purchase an aggregate of 276,714 shares of common stock with an exercise price of \$1.10 per share.

In June 1998, the Company entered into a \$3,000,000 mortgage agreement with Standard Mortgage Investors, LLC of which there were outstanding borrowings of \$1,389,000 and \$1,917,000 at September 30, 2003 and December 31, 2002, respectively. The principal balance is payable over 10 years, with the final payment due in June 2007. The mortgage note bears an interest rate of 7.375% and is secured by the real property located in Decatur, Illinois.

#### NOTE I - NON-CASH TRANSACTIONS

The Company received an equity ownership in Novadaq Technologies, Inc. ("Novadaq") of 4,000,000 common shares (representing approximately 16.4% of the outstanding shares) as part of the settlement between the Company and Novadaq reached on January 25, 2002. The Company had previously advanced \$690,000 to Novadaq for development costs and recorded these advances as an intangible asset. Based on the settlement, the Company has reclassified these advances as an Investment in Novadaq Technologies, Inc. The Company has determined this investment should be valued using the cost method as described in Accounting Principles Board ("APB") Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock."

NOTE J - EARNINGS PER COMMON SHARE

Basic net income (loss) per common share is based upon weighted average common shares outstanding. Diluted net income per common share is based upon the weighted average number of common shares outstanding, including the dilutive effect of stock options, warrants and convertible debt using the treasury stock method.

The following table shows basic and diluted earnings per share computations for the three and nine-month periods ended September 30, 2003 and 2002 (in thousands, except per share information):

	FOR THE THREE MONTHS ENDED SEPTEMBER 30, -----		FOR THE NINE MONTHS ENDED SEPTEMBER 30, -----	
	2003	2002	2003	2002
Net loss per share - basic:				
Net loss.....	(\$ 1,194)	(\$ 9,387)	(\$ 5,269)	(\$10,019)
Weighted average number of shares outstanding.....	19,754	19,610	19,721	19,567
Net loss per share - basic.....	(\$ 0.06)	(\$ 0.48)	(\$ 0.27)	(\$ 0.51)
	=====	=====	=====	=====
Net loss per share - diluted:				
Net loss.....	(\$ 1,194)	(\$ 9,387)	(\$ 5,269)	(\$10,019)
Net loss adjustment for interest on convertible debt and convertible interest on debt.....	--	--	--	--
Net loss, as adjusted.....	(\$ 1,194)	(\$ 9,387)	(\$ 5,269)	(\$10,019)
Weighted average number of shares outstanding.....	19,754	19,610	19,721	19,567
Additional shares assuming conversion of convertible debt and convertible interest on debt.....	--	--	--	--
Additional shares assuming exercise of warrants.....	--	--	--	--
	-----	-----	-----	-----
Additional shares assuming exercise of options	--	--	--	--
Weighted average number of shares outstanding, as adjusted	19,754	19,610	19,721	19,545
Net loss per share - diluted	(\$ 0.06)	(\$ 0.48)	(\$ 0.27)	(\$ 0.51)
	=====	=====	=====	-----

Certain warrants, options and conversion rights are not included in the earnings per share calculation when the exercise price or conversion price is greater than the average market price for the period. The number of shares subject to warrants, options and conversion rights excluded in each period is reflected in the following table.

	THREE MONTHS ENDED SEPTEMBER 30, -----		NINE MONTHS ENDED SEPTEMBER 30, -----	
	2003	2002	2003	2002
Shares subject to anti-dilutive warrants and conversion rights not included in earnings per share calculation.....	4,522	4,235	4,522	4,235
Shares subject to anti-dilutive options not included in earnings per share calculation.....	3,685	3,870	3,685	3,870

NOTE K - STOCK BASED COMPENSATION

The Company applies APB Opinion No. 25 "Accounting for Stock Issued to Employees" in accounting for qualifying options granted to its employees under its 1988 Incentive Compensation Program and applies Statement of Financial Accounting Standards No. 123 "Accounting for Stock Issued Employees" ("SFAS 123") for disclosure purposes only. The SFAS 123 disclosures include pro forma net income and earnings per share as if the fair value-based method of accounting had been used.

If compensation for employee options had been determined based on SFAS 123, the Company's pro forma net income and pro forma income per share for the nine months ended September 30, 2003 and 2002 would have been as follows:

	2003 -----	2002 -----
Net loss, as reported	(\$ 5,269,000)	(\$10,018,000)
Add stock-based employee compensation expense included in reported net income	--	--
Deduct total stock-based employee compensation expense determined under fair-value-based method for all awards	(285,000)	(216,000)
Pro forma net income (loss)	(\$ 5,554,000) =====	(\$ 10,234,000) =====
Basic and diluted income (loss) per share of common stock		
Basic as reported	\$ (0.27)	\$ (0.51)
Basic pro forma	\$ (0.28)	\$ (0.52)
Diluted as reported	N/A	N/A
Diluted pro forma	N/A	N/A

NOTE L - INDUSTRY SEGMENT INFORMATION

The Company classifies its operations into three business segments: ophthalmic, injectable and contract services. The ophthalmic segment manufactures, markets and distributes diagnostic and therapeutic pharmaceuticals. The injectable segment manufactures, markets and distributes injectable pharmaceuticals, primarily in niche markets. The contract services segment manufactures products for third party pharmaceutical and biotechnology customers based on their specifications. Selected financial information by industry segment is presented below (in thousands).

	THREE MONTHS ENDED SEPTEMBER 30, -----		NINE MONTHS ENDED SEPTEMBER 30, -----	
	2003 -----	2002 -----	2003 -----	2002 -----
REVENUES				
Ophthalmic .....	\$ 8,406	\$ 7,734	\$ 19,658	\$ 21,520
Injectable .....	3,033	3,203	10,482	11,401
Contract Services .....	2,059	1,184	4,980	6,808
Total revenues .....	\$ 13,498 =====	\$ 12,121 =====	\$ 35,120 =====	\$ 39,729 =====

GROSS PROFIT

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Ophthalmic .....	\$ 3,068	\$ 3,407	\$ 6,135	\$ 10,670
Injectable .....	809	1,514	4,588	5,934
Contract Services .....	347	(465)	(121)	567
Total gross profit .....	4,224	4,456	10,602	17,171
Operating expenses .....	4,792	6,472	14,160	18,521
Total operating income (loss) ...	(568)	(2,016)	(3,558)	(1,350)
Interest and other income (expense) ...	(626)	(762)	(1,882)	(2,475)
Income (loss) before income taxes...	\$ (1,194) =====	\$ (2,778) =====	\$ (5,440) =====	\$ (3,825) =====

The Company manages its business segments to the gross profit level and manages its operating costs on a company-wide basis. The Company does not identify assets by segment for internal purposes.

NOTE M - LEGAL PROCEEDINGS

On March 27, 2002, the Company received a letter informing it that the staff of the regional office of the Securities and Exchange Commission ("SEC") in Denver, Colorado, would recommend to the SEC that it bring an enforcement action against the Company and seek an order requiring the Company to be enjoined from engaging in certain conduct. The staff alleged that the Company misstated its income for fiscal years 2000 and 2001 by allegedly failing to reserve for doubtful accounts receivable and overstating its accounts receivable balance as of December 31, 2000. The staff alleged that internal control and books and records deficiencies prevented the Company from accurately recording, reconciling and aging its accounts receivable. The Company also learned that certain of its former officers, as well as a then current employee had received similar notifications. Subsequent to the issuance of the Company's consolidated financial statements for the year ended December 31, 2001, management of the Company determined it needed to restate the Company's financial statements for 2000 and 2001 to record a \$7.5 million increase to the allowance for doubtful accounts as of December 31, 2000, which it had originally recorded as of March 31, 2001.

On September 25, 2003, the Company consented to the entry of an administrative cease and desist order to resolve the issues arising from the staff's investigation and proposed enforcement action as discussed above. Without the Company admitting or denying the findings set forth therein, the consent order finds that the Company failed to promptly and completely record and reconcile cash and credit remittances, including those from its top five customers, to invoices posted in its accounts receivable sub-ledger. According to the findings in the consent order, the Company's problems resulted from, among other things, internal control and books and records deficiencies that prevented the Company from accurately recording, reconciling and aging its receivables. The consent order finds that the Company's 2000 Form 10-K and first quarter 2001 Form 10-Q misstated its account receivable balance or, alternatively, failed to disclose the impairment of its accounts receivable and that its first quarter 2001 Form 10-Q inaccurately attributed the increased accounts receivable reserve to a change in estimate based on recent collection efforts, in violation of Section 13(a) of the Exchange Act and rules 12b-20, 13a-1 and 13a-13 thereunder. The consent order also finds that the Company failed to keep accurate books and records and failed to devise and maintain a system of adequate internal accounting controls with respect to its accounts receivable in violation of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. The consent order does not impose a monetary penalty against the Company or require any additional restatement of the Company's financial statements. The consent order contains an additional commitment by the Company to do the following: (A) appoint a special committee comprised entirely of outside directors, (B) within 30 days after entry of the order, have the special committee retain a qualified independent consultant ("consultant") acceptable to the staff to perform a test of the Company's material internal controls, practices, and policies related to accounts receivable, and (C) within 180 days, have the consultant present his or her findings to the commission for review to provide assurance that the Company is keeping accurate books and records and has devised and maintained a system of adequate internal accounting controls with respect to the Company's accounts receivables. On October 27, 2003, the Company engaged Jefferson Wells, International to serve as consultant in this capacity. The Company intends to continue to work with the consultant and the SEC through this review process. As a result, the Company may incur additional costs and expenses in connection with this proceeding.

In October 2000, the FDA issued a warning letter to the Company following the FDA's routine cGMP inspection of the Company's Decatur manufacturing facilities. This letter addressed several deviations from regulatory requirements including cleaning validations and general documentation issues and requested corrective actions be undertaken by the Company. The Company initiated corrective actions and responded to the warning letter. Subsequently, the FDA conducted another inspection in late 2001 and identified deviations from regulatory requirements including process controls and cleaning validations. This led to the FDA leaving the warning letter in place and issuing a Form 483 to document its findings. While no further correspondence was received from the FDA, the Company responded to the inspectional findings. This response described the Company's plan for addressing the issues raised by the FDA and included improved cleaning validation, enhanced process controls and approximately \$2.0 million of capital improvements. In August 2002 the FDA conducted another inspection of the Decatur facility, which also identified deviations from

cGMPs. The Company responded to these observations in September 2002. In response to the Company's actions, the FDA conducted another inspection of the Decatur facility during the period December 10, 2002 to February 6, 2003. This inspection also identified deviations from regulatory requirements including the manner in which the Company processes and investigates manufacturing discrepancies and failures, customer complaints and the thoroughness of equipment cleaning validations. Deviations identified during this inspection had been raised in previous FDA inspections. The Company has responded to these latest findings in writing and in a meeting with the FDA in March 2003. The Company set forth its plan for implementing comprehensive corrective actions and has provided progress reports to the FDA on April 15, May 15 and June 15, 2003.

The Company continues to have discussions with the FDA relating to its ongoing compliance matters and expects that the Company will complete its current corrective plan for the Decatur facility in the fourth quarter of 2003. The Company expects that the FDA will reinspect its Decatur facility during the fourth quarter of 2003 or first quarter of 2004.

Upon completion of the reinspection, the FDA may take any of the following actions: (i) find that the Decatur facility is in substantial compliance; (ii) require the Company to undertake further corrective actions, which could include a recall of certain products, and then conduct another inspection to assess the success of those efforts; (iii) seek to enjoin the Company from further violations, which may include temporary suspension of some or all operations and potential monetary penalties; or (iv) take other enforcement action which may include seizure of Company products. At this time, it is not possible to predict the FDA's course of action.

FDA approval is required before any drug can be manufactured and marketed. New drugs require the filing of a New Drug Application ("NDA"), including clinical studies demonstrating the safety and efficacy of the drug. Generic drugs, which are equivalents of existing, off-patent brand name drugs, require the filing of an Abbreviated New Drug Application ("ANDA"). The Company believes that unless and until the issues identified by the FDA have been successfully corrected and the corrections have been verified through reinspection, it is doubtful that the FDA will approve any NDAs or ANDAs that may be submitted by the Company for products to be manufactured at its Decatur facility. This has adversely impacted, and is likely to continue to adversely impact, the Company's ability to grow sales. However, the Company believes that unless and until the FDA chooses option (iii) or (iv), the Company will be able to continue manufacturing and distributing its current product lines.

If the FDA chooses option (iii) or (iv), such action could significantly impair the Company's ability to continue to manufacture and distribute its current product line and generate cash from its operations and could result in a covenant violation under the Company's senior debt, any or all of which would have a material adverse effect on the Company's liquidity. Any monetary penalty assessed by the FDA also could have a material adverse effect on the Company's liquidity.

On August 9, 2003, Novadaq notified the Company that it had requested arbitration with the International Court of Arbitration ("ICA") related to a dispute between the Company and Novadaq regarding the issuance of a Right of Reference to Novadaq from Akorn for Novadaq's NDA and Drug Master File ("DMF") for specified indications for Akorn's drug IC Green. In its request for arbitration, Novadaq asserts that Akorn is obligated to provide the Right of Reference as described above pursuant to an amendment dated September 26, 2002 to the January 4, 2002 Supply Agreement between the two companies. Akorn does not believe it is obligated to provide the Right of Reference which, if provided, would likely reduce the required amount of time for clinical trials and reduce Novadaq's cost of developing a product for macular degeneration. The Company also is contemplating the possible development of a separate product for macular degeneration which, if developed, could face competition from any product developed by Novadaq. Even if the Right of Reference is provided, the approval process for such a product is expected to take several years. On October 17, 2003, the ICA notified the Company that it decided that this matter shall proceed to arbitration. The Company is in the process of preparing for arbitration on this matter and will defend itself vigorously.

In connection with the request for arbitration described above, on August 22, 2003, Novadaq filed a lawsuit and a Notice of Emergency Motion in the Circuit Court of Cook County, Illinois, County Department, Chancery Division for interim relief related to the issuance of the Right of Reference from Akorn to Novadaq. On September 22, 2003, Akorn and Novadaq entered into an Agreed Order whereby Akorn would provide the requested Right of Reference to Novadaq. The



Agreed Order terminates upon the settlement of the dispute between the parties or in the event that the final disposition of the arbitration filed with the ICA results in a final decision against Novadaq or a failure to hold that Novadaq has a right to the Right of Reference.

On October 8, 2003, the Company, pursuant to the terms of the Letter Agreement dated September 26, 2002 between the Company and AEG Partners LLC, as amended (the "AEG Letter Agreement"), terminated its consultant AEG Partners LLC ("AEG"). AEG contends that, as a result of the Exchange Transaction, the Company must pay it a "success fee" consisting of \$686,000 and a warrant to purchase 1,250,000 shares of the Company's common stock at \$1.00 per share, and adjust the terms of the warrant, pursuant to certain anti-dilution provisions, to take into account the impact of the convertible preferred stock issued in connection with the

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Exchange Transaction. The Company disputes that AEG is owed this success fee. Pursuant to the AEG Letter Agreement, the Company and AEG are trying to resolve the dispute. If this fails, the AEG Letter Agreement provides for mandatory and binding arbitration. If this matter proceeds to arbitration, the Company will vigorously defend itself and assert any appropriate counterclaims in regards to this matter.

On October 14, 2003, Leerink Swann & Co., Inc. ("Leerink") filed a complaint in the Supreme Court of the State of New York alleging a breach of contract for the payment of fees by the Company for investment banking services. Leerink alleged the Company was obligated to pay \$1,765,032 pursuant to a written agreement dated May 8, 2003 between Leerink and the Company (the "Leerink Agreement"). The Company disputed that Leerink was owed \$1,765,032. On November 14, 2003, Leerink and the Company reached a tentative settlement where, among other things, the Company will pay \$750,000 to Leerink, and the Company will extend the Leerink Agreement for an additional year. The settlement is contingent upon the execution of a written settlement agreement, at which time Leerink will dismiss the complaint.

The Company is a party to legal proceedings and potential claims arising in the ordinary course of its business. The amount, if any, of ultimate liability with respect to such matters cannot be determined. Despite the inherent uncertainties of litigation, management of the Company at this time does not believe that such proceedings will have a material adverse impact on the financial condition, results of operations, or cash flows of the Company.

#### NOTE N - RECENT ACCOUNTING PRONOUNCEMENTS

In June 2001, the FASB issued three statements, SFAS No. 141, "Business Combinations," SFAS No. 142, "Goodwill and Other Intangible Assets," and SFAS No. 143, "Accounting for Asset Retirement Obligations."

SFAS No. 141 supercedes APB Opinion No. 16, "Business Combinations," and eliminates the pooling-of-interests method of accounting for business combinations, thus requiring all business combinations to be accounted for using the purchase method. In addition, in applying the purchase method, SFAS No. 141 changes the criteria for recognizing intangible assets apart from goodwill. The following criteria is to be considered in determining the recognition of the intangible assets: (1) the intangible asset arises from contractual or other legal rights, or (2) the intangible asset is separable or dividable from the acquired entity and capable of being sold, transferred, licensed, rented, or exchanged. The requirements of SFAS No. 141 are effective for all business combinations initiated after June 30, 2001. The adoption of this new standard did not have any effect on the Company's financial statements.

SFAS No. 142 supercedes APB Opinion No. 17, "Intangible Assets," and requires goodwill and other intangible assets that have an indefinite useful life to no longer be amortized; however, these assets must be reviewed at least annually for impairment. The Company has adopted SFAS No. 142 as of January 1, 2002 and no impairments were recognized upon adoption. Subsequent to the adoption, the Company recorded an impairment charge of \$257,000 related to product license intangibles in the third quarter of 2002.

SFAS No. 143 requires entities to record the fair value of a liability for an asset retirement obligation in the period in which it is incurred. When the liability is initially recorded, the entity capitalizes a cost by increasing the carrying amount of the related long-lived asset. Over time, the liability is

accreted to its present value each period, and the capitalized cost is depreciated over the useful life of the related asset. Upon settlement of the liability, an entity either settles the obligation for its recorded amount or incurs a gain or loss upon settlement. The Company has adopted SFAS No. 143 as of January 1, 2002. The adoption of this new standard did not have any effect on the Company's financial statements.

In August 2001, the FASB issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." This statement addresses financial accounting and reporting for the impairment or disposal of long-lived assets. This statement supercedes SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of." This statement also supercedes the accounting and reporting provisions of APB Opinion No. 30, "Reporting the Results of Operations - Reporting the Effects of Disposal of a Segment of a Business and Extraordinary, Unusual and Infrequently Occurring Events and Transactions," for the disposal of a segment of a business (as previously defined in that Opinion). SFAS No. 144 is effective January 1, 2002. The adoption of this new standard did not have any effect on the Company's financial statements upon adoption. Subsequent to the adoption of this standard, the Company recorded a charge of \$545,000 in the third quarter of 2002 related to abandoned construction projects.

In April 2002, the FASB issued SFAS No. 145 "Recission of FASB Statements No. 4, 44 and 64, Amendment of FASB Statement No. 13 and Technical Corrections". This statement updates, clarifies and simplifies existing accounting pronouncements. SFAS No. 145 rescinds SFAS No. 4, "Reporting Gains and Losses from Extinguishment of Debt", which requires all gains and losses from

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extinguishment of debt to be aggregated and, if material, classified as an extraordinary item, net of related income tax effect. As a result, the criteria in APB 30 will now be used to classify those gains and losses. SFAS No. 64, "Extinguishment of Debt Made to Satisfy Sinking Fund Requirements", amended SFAS No. 4 is no longer necessary, because SFAS No. 4 has been rescinded. SFAS No. 145 amends SFAS No. 13 "Accounting for Leases", to require that certain lease modifications that have economic effects similar to a sale-leaseback transaction be accounted for in the same manner as a sale-leaseback transaction. Certain provisions of SFAS No. 145 are effective for the fiscal years beginning after May 15, 2002, while other provisions are effective for transactions occurring after May 15, 2002. The adoption of SFAS No. 145 has not had a material impact on the Company's financial statements but will have an impact on the gain from extinguishment of debt resulting from the Exchange Transaction.

In June 2002, the FASB issued SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities". SFAS No. 146 requires the Company to recognize costs associated with exit or disposal activities when they are incurred rather than at the date of a commitment to an exit or disposal plan. The Company will adopt SFAS No. 146 for exit or disposal activities initiated after December 31, 2002. The Company does not anticipate that adoption of this standard will have a material effect on its financial statements.

In December 2002, the FASB issued SFAS No. 148, "Accounting for Stock-Based Compensation - Transition and Disclosure, an amendment of FASB Statement No. 123". This Statement amends FASB Statement No. 123, "Accounting for Stock-Based Compensation", to provide alternative methods of transition for a voluntary change to the fair value method of accounting for stock-based employee compensation. In addition, this Statement amends the disclosure requirements of Statement No. 123 to require prominent disclosure in both annual and interim financial statements. Certain of the disclosure requirements are required for fiscal years ending after December 15, 2002 and are included in the Notes to the Consolidated Financial Statements.

In November 2002, the FASB issued Interpretation No. 45 ("FIN 45"), Guarantor's Accounting and Disclosure Requirement for Guarantees, Including Indirect Guarantees of Indebtedness to Others, an interpretation of FASB Statements No. 5, 57 and 107 and a rescission of FASB Interpretation No. 34. This Interpretation elaborates on the disclosure to be made by a guarantor in its interim and annual financial statements about its obligations under guarantees issued. The Interpretation also clarifies that a guarantor is required to recognize, at inception of a guarantee, a liability for the fair value of the obligation undertaken. The initial recognition and measurement provisions of the Interpretation are applicable to guarantees issued or modified after December 31, 2002 and are not expected to have a material effect on the

Company's financial statements. The disclosure requirements are effective for financial statements of interim or annual periods ending after December 15, 2002. The Company has determined that FIN 45 did not have any effect on the Company's financial statements.

In January, 2003, the FASB issued Interpretation No. 46. ("FIN 46"), "Consolidation of Variable Interest Entities" with the objective of improving financial reporting by companies involved with variable interest entities. A variable interest entity is a corporation, partnership, trust, or other legal structure used for business purposes that either (a) does not have equity investors with voting rights, or (b) has equity investors that do not provide sufficient financial resources for the equity to support its activities. Historically, entities generally were not consolidated unless the entity was controlled through voting interests. FIN 46 changes that by requiring a variable interest entity to be consolidated by a company if that company is subject to a majority of risk of loss from the variable interest entity's activities or entitled to receive a majority of the entity's residual returns, or both. A company that consolidates a variable interest entity is called the "primary beneficiary" of that entity. FIN 46 also requires disclosures about variable interest entities that a company is not required to consolidate but in which it has significant variable interest. The consolidation requirements of FIN 46 apply immediately to variable interest entities created after January 1, 2003. The consolidation requirements of FIN 46 apply to existing entities in the first fiscal year or interim period beginning after June 15, 2003. Also, certain disclosure requirements apply to all financial statements issued after January 31, 2003, regardless of when the variable interest entity was established. The Company has determined that FIN 46 will not have an impact on its financial condition, results of operations or cash flows.

In May 2003, the FASB issued SFAS No. 150, Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity. SFAS 150 establishes standards for how entities classify and measure in their statement of financial position certain financial instruments with characteristics of both liabilities and equity. The provisions of SFAS 150 are effective for financial statements entered into or modified after May 31, 2003. The Company is currently evaluating the impact of SFAS 150 on the accounting for its Exchange Transaction.

#### NOTE O - SUBSEQUENT EVENTS

On October 7, 2003, the Investors purchased all of the Company's then outstanding senior bank debt from The Northern Trust Company and exchanged such debt with the Company in the Exchange Transaction for (i) 257,172 shares of Series A 6.0% Participating Convertible Preferred Stock ("Preferred Stock") of the Company, (ii) the 2003 Subordinated Notes, (iii) warrants to purchase an aggregate of 8,572,400 shares of the Company's common stock ("Common Stock") with an exercise price of \$1.00 per share, and (iv) \$5,473,862 in cash from the New Credit Facility which the Company entered into simultaneously with the Exchange Transaction. For more information on the New Credit Facility, see Note H - "Financing Arrangements" - to the Condensed Consolidated Financial Statements. The Company also issued to the holders of the 2003 Subordinated Notes warrants to purchase an aggregate of 276,714 shares of Common Stock with an exercise price of \$1.10 per share.

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The Preferred Stock accrues dividends at a rate of 6.0% per annum, which rate is fully cumulative, accrues daily and compounds quarterly, provided that in the event stockholder approval authorizing sufficient shares of Common Stock to be authorized and reserved for conversion of all of the Preferred Stock and warrants issued in connection with the Exchange Transaction ("Stockholder Approval") has not been received by October 7, 2004, such rate is to increase to 10.0% until Stockholder Approval has been received and sufficient shares of Common Stock are authorized and reserved. Subject to certain limitations, on October 31, 2011, the Company is required to redeem all shares of Preferred Stock for an amount equal to \$100 per share, as may be adjusted from time to time as set forth in the Articles of Incorporation (the "Articles of Incorporation") of the Company (the "Stated Value"), plus all accrued but unpaid dividends on such share. Shares of Preferred Stock have liquidation rights in preference over junior securities, including the Common Stock, and have certain antidilution protections. The Preferred Stock is convertible at any time into a number of shares of Common Stock equal to the quotient obtained by dividing (x) the Stated Value plus any accrued but unpaid dividends by (y) \$0.75, as such numbers may be adjusted from time to time pursuant to the terms of the Articles

of Amendment. Provided that Stockholder Approval has been received and sufficient shares of Common Stock are authorized and reserved for conversion, all shares of Preferred Stock shall convert to shares of Common Stock on the earlier to occur of (i) October 8, 2006 and (ii) the date on which the closing price per share of Common Stock for at least 20 consecutive trading days immediately preceding such date exceeds \$4.00 per share.

Holders of Preferred Stock have full voting rights, with each holder entitled to a number of votes equal to the number of shares of Common Stock into which its shares can be converted. Holders of 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 Preferred Stock is required by law or by the Articles of Incorporation. The Articles of Incorporation provide that the Company cannot take certain actions, including (i) issuing additional Preferred Stock or securities senior to or on par with the Preferred Stock, (ii) amending the Company's Articles of Incorporation or By-laws to alter the rights of the Preferred Stock, (iii) effecting a change of control or (iv) effecting a reverse split of the Preferred Stock, without the approval of the holders of 50.1% of the Preferred Stock.

The 2003 Subordinated Notes accrue interest at a rate of prime plus 1.75% and are due and payable on April 7, 2006. The warrants issued in connection with the Exchange Transaction (the "Warrants") are currently exercisable and expire on October 7, 2006.

As part of the Exchange Transaction, the Company and the Investors also entered into a Registration Rights Agreement (the "Registration Rights Agreement") pursuant to which the Investors were granted certain registration rights with respect to the Preferred Stock and Warrants, including three (3) demand registrations for holders of more than 5,000,000 shares of Common Stock, incidental or piggy-back registrations upon a registration by the Company on Form S-1, S-2 or S-3 and shelf registration rights. The Company further agreed not to enter into any new agreement with more preferential registration rights.

The obligations of the Company under the New Credit Facility have been guaranteed by the Kapoor Trust and Arjun Waney. In exchange for this guaranty, the Company issued additional warrants to purchase 880,000 and 80,000 shares of Common Stock to the Kapoor Trust and Arjun Waney, respectively, and has agreed to issue to each of them, on each anniversary of the date of the consummation of the Exchange Transaction, warrants to purchase an additional number of shares of Common Stock equal to 0.08 multiplied by the principal dollar amount of the Company's indebtedness then guaranteed by them under the New Credit Facility. The warrants issued in exchange for these guarantees have an exercise price of \$1.10 per share.

After giving effect to the Exchange Transaction, the Investors hold approximately 75% of the aggregate voting rights represented by outstanding shares of Common and Preferred Stock. After giving effect to the Exchange Transaction and to the exercise of all outstanding conversion rights, warrants and options to acquire Common Stock, the Investors would hold approximately 77% of the Common Stock, on a fully-diluted basis. Prior to the Exchange Transaction, the Investors held approximately 35% of the outstanding voting securities and would have held approximately 42% of the Common Stock on a fully-diluted basis.

On October 8, 2003, the Company, pursuant to the terms of the AEG Letter Agreement, terminated its consultant AEG. AEG contends that, as a result of the Exchange Transaction, the Company must pay it a "success fee" consisting of \$686,000 and a warrant to purchase 1,250,000 shares of the Company's common stock at \$1.00 per share, and adjust the terms of the warrant, pursuant to certain anti-dilution provisions, to take into account the impact of the convertible preferred stock issued in connection with the Exchange Transaction. For further discussion, refer to Note M - "Legal Proceedings" - to the Condensed Consolidated Financial Statements.

On October 14, 2003, Leerink filed a complaint in the Supreme Court of the State of New York alleging a breach of contract for the payment of fees by the Company for investment banking services. For further discussion, refer to Note M - "Legal Proceedings" - to the Condensed Consolidated Financial Statements.

On October 22, 2003, the Company, upon recommendation of the Audit Committee of its Board of Directors and approval by its Board of Directors, engaged BDO

Seidman, LLP as the Company's principal accountants to audit the financial statements of the Company for its fiscal year ending December 31, 2003, and to review the financial statements of the Company for the fiscal quarters ended March 31, June 30 and September 30, 2003. BDO Siedman has informed the Company that it will not be able to complete the review of the Company's quarterly financial statements until December 2003.

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Item 2.

AKORN, INC.  
MANAGEMENT'S DISCUSSION AND ANALYSIS  
OF FINANCIAL CONDITION AND  
RESULTS OF OPERATIONS

CRITICAL ACCOUNTING POLICIES

REVENUE RECOGNITION

The Company recognizes product sales for its ophthalmic and injectable business segments upon the shipment of goods for customers whose terms are FOB shipping point. The Company has several customers whose terms are FOB destination point and recognizes revenue upon delivery of the product to these customers. Revenue is recognized when all obligations of the Company have been fulfilled and collection of the related receivable is probable. Provision for estimated chargebacks, rebates, discounts and product returns is made at the time of sale and is analyzed and adjusted, if necessary, at each balance sheet date.

The contract services segment, which produces products for third party customers, based upon their specification, at a pre-determined price, also recognizes sales upon the shipment of goods or upon delivery of the product as appropriate. Revenue is recognized when all obligations of the Company have been fulfilled and collection of the related receivable is probable.

Royalty revenue is recognized in the period to which such revenue relates based upon when the Company receives notification (monthly or quarterly) from the counterparty that such counterparty has sold product for which Akorn is entitled to a royalty.

ALLOWANCE FOR CHARGEBACKS AND REBATES

The Company maintains allowances for chargebacks and rebates. These allowances are reflected as a reduction of accounts receivable.

The Company enters contractual agreements with certain third parties such as hospitals and group-purchasing organizations to sell certain products at predetermined prices. The parties have elected to have these contracts administered through wholesalers. When a wholesaler sells products to one of the third parties that is subject to a contractual price agreement, the difference between the price to the wholesaler and the price under contract is charged back to the Company by the wholesaler. The Company tracks sales and submitted chargebacks by product number for each wholesaler. Utilizing this information, the Company estimates a chargeback percentage for each product. The Company reduces gross sales and increases the chargeback allowance by the estimated chargeback amount for each product sold to a wholesaler. The Company reduces the chargeback allowance when it processes a request for a chargeback from a wholesaler. Actual chargebacks processed can vary materially from period to period.

Management obtains wholesaler inventory reports to aid in analyzing the reasonableness of the chargeback allowance. The Company assesses the reasonableness of its chargeback allowance by applying the product chargeback percentage based on historical activity to the quantities of inventory on hand per the wholesaler inventory reports.

Similarly, the Company maintains an allowance for rebates related to contract and other programs with certain customers. The rebate allowance also reduces gross sales and accounts receivable by the amount of the estimated rebate amount when the Company sells its products to its rebate-eligible customers. Rebate percentages vary by product and by volume purchased by each eligible customer. The Company tracks sales by product number for each eligible customer and then applies the applicable rebate percentage, using both historical trends and actual experience to estimate its rebate allowance. The

Company reduces gross sales and increases the rebate allowance by the estimated rebate amount for each product sold to an eligible customer. The Company reduces the rebate allowance when it processes a customer request for a rebate. At each balance sheet date, the Company evaluates the allowance against actual rebates processed and such amount can vary materially from period to period.

The recorded allowances reflect the Company's current estimate of the future chargeback and rebate liability to be paid or credited to the wholesaler under the various contracts and programs. For the three-month periods ended September 30, 2003 and 2002, the Company recorded chargeback and rebate expense of \$4,332,000, and \$4,693,000, respectively. For the nine months ended September 30, 2003 and 2002, the Company recorded chargeback and rebate expense of \$10,637,000, and \$12,247,000, respectively. The

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allowance for chargebacks and rebates was \$5,407,000 and \$4,302,000 as of September 30, 2003 and December 31, 2002, respectively.

#### ALLOWANCE FOR PRODUCT RETURNS

The Company also maintains an allowance for estimated product returns. This allowance is reflected as a reduction of accounts receivable balances. The Company evaluates the allowance balance against actual returns processed. In addition to considering in process product returns and assessing the potential implications of historical product return activity, the Company also considers the wholesaler's inventory information to assess the magnitude of unconsumed product that may result in a product return to the Company in the future. Actual returns processed can vary materially from period to period. For the three-month periods ending September 30, 2003 and 2002 the Company recorded a provision for product returns of \$453,000, and \$790,000, respectively. For the nine-month periods ending September 30, 2003 and 2002 the Company recorded a provision for product returns of \$1,790,000, and \$1,822,000, respectively. The allowance for potential product returns was \$1,459,000 and \$1,166,000 at September 30, 2003 and December 31, 2002, respectively.

#### ALLOWANCE FOR DOUBTFUL ACCOUNTS

The Company maintains an allowance for doubtful accounts, which reflects trade receivable balances owed to the Company that are believed to be uncollectible. This allowance is reflected as a reduction of accounts receivable balances. In estimating the allowance for doubtful accounts, the Company has:

- Identified the relevant factors that might affect the accounting estimate for allowance for doubtful accounts, including: (a) historical experience with collections and write-offs; (b) credit quality of customers; (c) the interaction of credits being taken for discounts, rebates, allowances and other adjustments; (d) balances of outstanding receivables, and partially paid receivables; and (e) economic and other exogenous factors that might affect collectibility (e.g., bankruptcies of customers, factors that affect particular distribution channels, etc.).
- Accumulated data on which to base the estimate for allowance for doubtful accounts, including: (a) collections and write-offs data; (b) information regarding current credit quality of customers; and (c) other information such as buying patterns and payment patterns, particularly in respect of major customers.
- Developed assumptions reflecting management's judgments as to the most likely circumstances and outcomes, regarding, among other matters: (a) collectibility of outstanding balances relating to "partial payments;" (b) the ability to collect items in dispute (or subject to reconciliation) with customers; and (c) economic factors that might affect collectibility of outstanding balances - based upon information available at the time.

For the three-month periods ending September 30, 2003 and 2002, the Company recorded a provision, net of recoveries, for doubtful accounts of \$21,000 and \$370,000, respectively. For the nine-month periods ending September 30, 2003 and 2002, the Company recorded a provision, net of recoveries, for doubtful accounts of (\$267,000) and (\$30,000), respectively. The allowance for doubtful accounts was \$520,000 and \$1,200,000 as of September 30, 2003 and December 31, 2002,

respectively. As of September 30, 2003, the Company had a total of \$3,439,000 of past due gross accounts receivable, of which \$118,000 was over 60 days past due. The Company performs monthly a detailed analysis of the receivables due from its wholesaler customers and provides a specific reserve against known uncollectible items for each of the wholesaler customers. The Company also includes in the allowance for doubtful accounts an amount that it estimates to be uncollectible for all other customers based on a percentage of the past due receivables. The percentage reserved increases as the age of the receivables increases. Of the recorded allowance for doubtful accounts of \$520,000, the portion related to the wholesaler customers is \$415,000 with the remaining \$105,000 reserve for all other customers.

#### ALLOWANCE FOR DISCOUNTS

The Company maintains an allowance for discounts, which reflects discounts available to certain customers based on agreed upon terms of sale. This allowance is reflected as a reduction of accounts receivable. The Company evaluates the allowance balance against actual discounts taken. For the three-month periods ending September 30, 2003 and 2002, the Company recorded a provision for discounts of \$230,000 and \$246,000, respectively. For the nine months ending September 30, 2003 and 2002, the Company recorded a provision for discounts of \$588,000 and \$759,000, respectively. The allowance for discounts was \$184,000 and \$172,000 as of September 30, 2003 and December 31, 2002, respectively.

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#### ALLOWANCE FOR SLOW-MOVING INVENTORY

The Company maintains an allowance for slow-moving and obsolete inventory based upon recent sales activity by unit and wholesaler inventory information. For the three and nine-month periods ended September 30, 2003, the Company recorded a provision of \$263,000 and \$671,000, respectively. For the nine months ended September 30, 2002, the Company recorded a provision of \$493,000. There was no expense recorded in the third quarter of 2002. The allowance for inventory obsolescence at September 30, 2003 and December 31, 2002 was \$1,118,000 and \$1,206,000, respectively.

#### INCOME TAXES

The Company files a consolidated federal income tax return with its subsidiary. Deferred income taxes are provided in the financial statements to account for the tax effects of temporary differences resulting from reporting revenues and expenses for income tax purposes in periods different from those used for financial reporting purposes. The Company records a valuation allowance to reduce the deferred tax assets to the amount that is more likely than not to be realized. In performing its analysis of whether a valuation allowance to reduce the deferred tax asset is necessary, the Company considers both negative and positive evidence, which can be objectively verified. Based upon its analysis, the Company established a valuation allowance in 2002 against previously established deferred tax assets and for the first nine months of 2003 to reduce the deferred tax asset to zero.

#### INTANGIBLES

Intangibles consist primarily of product licensing and other such costs that are capitalized and amortized on the straight-line method over the lives of the related license periods or the estimated life of the acquired product, which range from 17 months to 18 years. Accumulated amortization at September 30, 2003 and December 31, 2002 was \$9,590,000 and \$8,543,000, respectively. The Company annually assesses the impairment of intangibles based on several factors, including estimated fair market value and anticipated cash flows.

#### FORWARD-LOOKING STATEMENTS AND FACTORS AFFECTING FUTURE RESULTS

Certain statements in this Form 10-Q constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act. When used in this document, the words "anticipate," "believe," "estimate" and "expect" and similar expressions are generally intended to identify forward-looking statements. Any forward-looking statements, including statements regarding the intent, belief or expectations of the Company or its management are not guarantees of future performance. These statements involve risks and uncertainties and actual results may differ materially from those in the

forward-looking statements as a result of various factors, including but not limited to:

- the Company's ability to resolve its Food and Drug Administration ("FDA") compliance issues at its Decatur, Illinois facility;
- the Company's ability to avoid defaults under the covenants contained in its new bank credit agreement with LaSalle Bank National Association ("LaSalle Bank");
- the Company's ability to generate cash from operations sufficient to meet its working capital requirements;
- the Company's ability to obtain additional funding to grow its business;
- the effects of federal, state and other governmental regulation of the Company's business;
- the Company's success in developing, manufacturing and acquiring new products;
- the Company's ability to bring new products to market and the effects of sales of such products on the Company's financial results;
- the effects of competition from generic pharmaceuticals and from other pharmaceutical companies;
- availability of raw materials needed to produce the Company's products;

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- other factors referred to in the Company's other Securities and Exchange Commission filings including " Item 7. Managements Discussion and Analysis of Financial Conditions and Results of Operations - Factors that May Affect Future Results" in the Company's Form 10-K for 2002.

RESULTS OF OPERATIONS

THREE MONTHS ENDED SEPTEMBER 30, 2003 COMPARED TO 2002

The following table sets forth, for the periods indicated, revenues by segment, excluding intersegment sales (in thousands):

	THREE MONTHS ENDED SEPTEMBER 30,	
	2003	2002
	-----	-----
Ophthalmic segment.....	\$ 8,406	\$ 7,734
Injectable segment.....	3,053	3,203
Contract Services segment...	2,059	1,184
	-----	-----
Total revenues.....	\$ 13,498	\$ 12,121
	=====	=====

Consolidated revenues increased 11.4% in the quarter ended September 30, 2003 compared to the same period in 2002.

Ophthalmic segment revenues increased 8.7%, due to higher volume of the Company's diagnostic products, particularly AK Dilate and IC Green. Injectable segment revenues decreased 4.7% for the quarter because of shortfalls in the antidote segment resulting from a decrease in demand compared to the prior year. Those shortfalls were partially offset by the introduction of a new product, Lidocaine Jelly, during the quarter. Lidocaine Jelly is produced in the Company's Somerset, New Jersey facility. Contract services revenues increased by 73.9% due to the Company's current customer base increasing inventory levels of products manufactured by the Company.

The Company anticipates that revenues from all of its product segments are not likely to grow until the issues surrounding the FDA review are resolved. The



FDA compliance matters are not anticipated to be resolved prior to the first quarter of 2004. See Part II - Item 1 - "Legal Proceedings". Although one of the production rooms at the Company's Decatur, Illinois facility has recently been requalified for aseptic processing of ophthalmic products, production of Fluress and Flouracaine, two of the Company's ophthalmic products, remains suspended pending development of a new container closure system for those products. The Company does not expect to resume production of Fluress and Flouracaine prior to the second quarter of 2004. As a result, the Company expects that revenues and cash flow from operations for the remainder of 2003 and the first quarter of 2004 will be adversely impacted and that revenues and cash flows in the second quarter of 2004 and beyond could be adversely impacted if the Company is unable to resume production of Fluress and Flouracaine in the second quarter of 2004.

Consolidated gross margin was 31.3% for the third quarter as compared to a gross margin of 36.8% in the same period a year ago, mainly due to the volume decrease in high margin antidote products as well as lower production levels due to the aseptic production rooms being closed. Additionally, increased costs associated with addressing the Company's current FDA compliance matters had a negative margin impact for the quarter.

Selling, general and administrative (SG&A) expenses decreased 20.9%, to \$4,151,000 from \$5,245,000, during the quarter ended September 30, 2003 as compared to the same period in 2002. Included in 2002 results were a \$257,000 and \$545,000 asset impairment charge related to intangible assets and construction-in-progress. Excluding these charges, SG&A decreased by 6.6% due to lower personnel and marketing costs partially offset by higher senior debt restructuring costs.

Provision, net of recoveries, for bad debts was \$21,000 for the quarter, versus \$370,000 for the third quarter of 2002. The lower provision is driven mainly by lower past due wholesaler receivables.

Research and development (R&D) expense decreased 45.6% in the quarter, to \$271,000 from \$498,000 for the same period in 2002 due to refocusing resources away from R&D activities to resolve issues related to FDA compliance.

Interest and other expense for the third quarter of 2003 was \$626,000, a 17.8% decrease compared to the same period in the prior year, primarily due to lower interest rates as well as a lower debt balance.

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The Company files a consolidated federal income tax return with its subsidiary. Deferred income taxes are provided in the financial statements to account for the tax effects of temporary differences resulting from reporting revenues and expenses for income tax purposes in periods different from those used for financial reporting purposes. The Company records a valuation allowance to reduce the deferred tax asset to the amount that is more likely than not to be realized. Beginning with the third quarter of 2002, the Company recorded a valuation allowance to reduce the deferred tax asset to zero, and the Company has continued to do so at the end of each subsequent quarter. The Company established a valuation allowance of \$484,000 in the third quarter of 2003, which offset the deferred tax asset recorded in that quarter. This resulted in a net tax provision of \$0 for the third quarter of 2003, compared to a net tax provision of \$6,609,000 for the third quarter of 2002. The net tax provision for the third quarter of 2002 includes a \$7,700,000 deferred tax valuation allowance established against deferred tax assets recorded in the third quarter of 2002 and in prior periods.

The Company reported a net loss of \$1,194,000 or \$0.06 per weighted average share for the three months ended September 30, 2003, versus a loss of \$9,387,000 or \$0.48 per weighted average share for the comparable prior year quarter. This decrease in net loss was due primarily to the year to date impact of the deferred tax valuation allowance established in 2002 against previously recorded tax assets, as well as lower expenditures in SG&A and research and development costs.

NINE MONTHS ENDED SEPTEMBER 30, 2003 COMPARED TO 2002

The following table sets forth, for the periods indicated, revenues by segment, excluding intersegment sales (in thousands):

NINE MONTHS ENDED SEPTEMBER 30,

	2003	2002
Ophthalmic segment.....	\$ 19,658	\$ 21,520
Injectable segment.....	10,482	11,401
Contract Services segment...	4,980	6,808
	-----	-----
Total revenues.....	\$ 35,120	\$ 39,729
	=====	=====

Consolidated revenues decreased 11.6% for the nine months ended September 30, 2003 compared to the same period in 2002.

Ophthalmic segment revenues decreased 8.7%, primarily due to the temporary suspension in late 2002 of production of Fluress and Flouracaine, as well as increased customer purchases of angiography and ointment products in the fourth quarter of 2002, which resulted in surplus customer inventory during the first six months of 2003. Injectable segment revenues decreased 8.1% year to date due to lower volumes of anesthesia and antidote products in the third quarter partially offset by sales of the newly introduced product, Lidocaine Jelly. Contract services revenues decreased by 26.9% due mainly to customer concerns about the status of the ongoing FDA compliance matters at the Company's Decatur facility as well as the temporary closure of an aseptic production room at that same facility.

The Company anticipates that revenues from all of its product segments are not likely to grow until the issues surrounding the FDA review are resolved. The FDA compliance matters are not anticipated to be resolved prior to the first quarter of 2004. See Part II - Item 1 - "Legal Proceedings". Although one of the production rooms at the Company's Decatur, Illinois facility has recently been requalified for aseptic processing of ophthalmic products, production of Fluress and Flouracaine, two of the Company's ophthalmic products, remains suspended pending development of a new container closure system for those products. The Company does not expect to resume production of Fluress and Flouracaine prior to the second quarter of 2004. As a result, the Company expects that revenues and cash flow from operations for the remainder of 2003 and the first quarter of 2004 will be adversely impacted and that revenues and cash flows in the second quarter of 2004 and beyond could be adversely impacted if the Company is unable to resume production of Fluress and Flouracaine in the second quarter of 2004.

The chargeback and rebate expense for the nine months ended September 30, 2003 declined to \$10,637,000 from \$12,247,000 in the comparable period in the prior year, due to the increase in the product sales mix of lower chargeback and rebate percentage items.

Year to date consolidated gross margin was 30.2% for 2003 as compared to a gross margin of 43.2% in the same period a year ago. This is driven by the decrease in volume across all revenue categories as well as increased costs associated with the resolution of the Company's current FDA compliance matters.

Selling, general and administrative (SG&A) expenses decreased 25.0%, to \$12,006,000 from \$16,014,000, for the year to date period ended September 30, 2003 as compared to the same period in 2002. Included in 2002 results were \$1,559,500, \$257,000 and \$545,000 asset impairment charges related to the Johns Hopkins patents, intangible assets and construction-in-progress. Excluding

these charges, SG&A decreased by 10.1% due to lower personnel and marketing costs partially offset by higher senior debt restructuring costs.

Provision, net of recoveries, for bad debts was a \$267,000 net recovery year to date, reflecting a \$369,000 provision, which was offset by \$636,000 in recoveries for the same period. The bad debt expense net of recoveries for 2002 was a net \$30,000 recovery.

Research and development (R&D) expense decreased 25.2% in 2003, to \$1,107,000 from \$1,480,000 for the same period in 2002 due to refocusing

resources away from R&D activities to resolve issues related to FDA compliance.

Interest and other expense for the nine-month period ending September 30, 2003 was \$1,882,000, a 24.0% decrease compared to the same period in the prior year, primarily due to lower interest rates as well as a lower debt balance.

The Company files a consolidated federal income tax return with its subsidiary. Deferred income taxes are provided in the financial statements to account for the tax effects of temporary differences resulting from reporting revenues and expenses for income tax purposes in periods different from those used for financial reporting purposes. The Company records a valuation allowance to reduce the deferred tax assets to the amount that is more likely than not to be realized. Beginning with the third quarter of 2002, the Company recorded a valuation allowance to reduce the deferred tax asset to zero, and the Company has continued to do so at the end of each subsequent quarter. The Company recorded a valuation allowance of \$2,100,000 for the first nine months of 2003, which offset the deferred tax asset recorded in that period. The net tax benefit of \$171,000 for the nine months ending September 30, 2003 relates to state tax refunds. The net tax provision of \$6,193,000 for the same period in 2002 includes a \$7,700,000 deferred tax valuation allowance established against deferred tax assets recorded in the third quarter of 2002 and in prior periods.

The Company reported a net loss of \$5,269,000 or \$0.27 per weighted average share for the nine months ended September 30, 2003, versus \$10,018,000 or \$0.51 per weighted average share for the comparable prior year quarter. The decrease in net loss was due primarily to the year to date impact of the deferred tax valuation allowance established in 2002 against previously recorded tax assets, as well as reduced SG&A, R&D and interest expenses offset by lower sales and gross profit.

#### FINANCIAL CONDITION AND LIQUIDITY

##### Overview

As of September 30, 2003, the Company had cash and cash equivalents of \$304,000 and net accounts receivable of \$3,167,000. The net working capital deficiency at September 30, 2003 was \$1,328,000 versus \$30,564,000 at December 31, 2002. The significant improvement in working capital is due to the reclassification of a portion of the Company's senior debt obligation to long-term debt due to the Exchange Transaction discussed below. See Note H - "Financing Arrangements" - to the Condensed Consolidated Financial Statements.

For the nine months ended September 30, 2003, the Company used \$927,000 in cash from operations, primarily due to an increase in accounts receivable partially offset by a decrease in inventory. The increase in receivables was due to the increase in sales for the quarter. Inventory decreased due to strict controls over purchases of raw materials and components. Investing activities during the period ended September 30, 2003 used \$1,302,000 in cash, including \$1,152,000 related to the lyophilized (freeze-dried) pharmaceuticals manufacturing line expansion. Financing activities generated \$2,169,000 in cash during the period ended September 30, 2003, as the company utilized its line of credit to meet its working capital needs.

On October 7, 2003, a group of investors (the "Investors") purchased all of the Company's then outstanding senior bank debt from The Northern Trust Company and exchanged such debt with the Company (the "Exchange Transaction") for (i) 257,172 shares of Series A 6.0% Participating Convertible Preferred Stock ("Preferred Stock") of the Company, (ii) subordinated promissory notes in the aggregate principal amount of \$2,767,139 (the "2003 Subordinated Notes") issued by the Company to (a) The John N. Kapoor Trust dtd 9/20/89 (the "Kapoor Trust"), the sole trustee and sole beneficiary of which is Dr. John N. Kapoor, the Company's Chairman of the Board of Directors and the holder of a significant stock position in the Company, (b) Arjun Waney, a newly-elected director and the holder of a significant stock position in the Company, and (c) Argent Fund Management Ltd., for which Mr. Waney serves as Chairman and Managing Director and 51% of which is owned by Mr. Waney, (iii) warrants to purchase an aggregate of 8,572,400 shares of the Company's common stock with an exercise price of \$1.00 per share, and (iv) \$5,473,862 in cash from the proceeds of the term loan under the New Credit Facility described in the next paragraph. The Company also issued to the holders of the 2003 Subordinated Notes warrants to purchase an aggregate of 276,714 shares of common stock with an exercise price of \$1.10 per share.

Simultaneously with the consummation of the Exchange Transaction, the Company entered into a credit agreement with LaSalle Bank providing the Company with a \$7,000,000 term loan and a revolving line of credit of up to \$5,000,000 to provide for working capital needs (collectively, the "New Credit Facility") secured by substantially all of the assets of the Company and its subsidiaries. The obligations of the Company under the New Credit Facility have been guaranteed by the Kapoor Trust and Arjun Waney. In exchange for this guaranty, the Company issued additional warrants to purchase 880,000 and 80,000 shares of common stock to the Kapoor Trust and Arjun Waney, respectively, and has agreed to issue to each of them, on each anniversary of the date of the consummation of the Exchange Transaction, warrants to purchase an additional number of shares of common stock equal to 0.08 multiplied by the principal dollar amount of the Company's indebtedness then guaranteed by them under the New Credit Facility. The warrants issued in exchange for these guarantees have an exercise price of \$1.10 per share.

The primary impact of the Exchange Transaction and New Credit Facility on the Company's liquidity and capital resources was as follows:

- The Company's then-existing default on its senior bank debt with Northern Trust was eliminated;
- The Company's then-existing defaults on its subordinated loans from NeoPharm, Inc. and the Kapoor Trust were waived;
- The total amount of the Company's senior bank debt was reduced from \$37,801,000 as of September 30, 2003 to \$7,000,000 as of the closing of those transactions;
- The interest rate on the Company's senior bank debt was reduced from prime plus 3.0% to prime plus 1.75% for the new term loans and prime plus 1.50% for the new revolving line of credit;
- The Company obtained a revolving line of credit of up to \$5,000,000 and an additional \$1,000,000 pursuant to the term loan under the New Credit Facility to meet working capital needs and fund future operations;
- The Company issued additional subordinated debt with an aggregate principal amount of \$2.767 million, which accrues interest at a rate of prime plus 1.75% per annum;
- The Company issued preferred stock with an aggregate initial stated value of \$25.717 million, which accrues dividends at a rate of 6.0% per annum; and
- The Investors acquired preferred stock and warrants that, as of the closing, had the right to acquire approximately 44.1 million shares of the Company's common stock, or more than 220% of the outstanding shares of common stock prior to the closing.

As of November 18, 2003, the Company had approximately \$1.0 million in cash and approximately \$5.0 million of undrawn availability under the new line of credit with LaSalle Bank.

Akorn believes that its new line of credit and cash flow from operations will be sufficient to operate its business for the foreseeable future. However, the Company incurred operating losses for the last three years and the first nine months of 2003. Although the Company was able to generate positive cash flow from operations in 2002, cash flow from operations for the first nine months of 2003 was (\$927,000).

If the new line of credit and cash flow from operations are not sufficient to fund the operation and growth of Akorn's business, Akorn may be required to seek additional financing. Such additional financing may not be available when needed or on terms favorable to Akorn and its shareholders. Any such additional financing, if obtained, will likely require the granting of rights, preferences or privileges senior to those of the common stock and result in additional dilution of the existing ownership interests of the common stockholders.

The Company continues to be subject to potential claims by the FDA that could have a material adverse effect on the Company. See part II - Item 1 - "Legal Proceedings". There can be no guarantee that the Company will successfully resolve the ongoing compliance matters with the FDA. However, the Company has submitted to the FDA and begun to implement a plan for comprehensive

corrective actions at its Decatur, Illinois facility.

#### New Credit Agreement

As discussed in Note H - "Financing Arrangements" - to the Condensed Consolidated Financial Statements, the Company has entered into a New Credit Facility with LaSalle Bank. The New Credit Facility with LaSalle Bank consists of a \$5,500,000 term loan A, a \$1,500,000 term loan B (collectively, the "Term Loans") as well as a revolving line of credit of up to \$5,000,000 (the "Revolver") secured by substantially all of the assets of the Company and its subsidiaries. The New Credit Facility matures on October 7, 2005. The Term Loans bear interest at prime plus 1.75% and require principal payments of \$195,000 per month commencing October 31, 2003, with the payments first to be applied to term loan B. The Revolver bears interest at prime plus 1.50%.

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Availability under the Revolver is determined by the sum of (i) 80% of eligible accounts receivable, (ii) 30% of raw material, finished goods and component inventory excluding packaging items, not to exceed \$2.5 million and (iii) the difference between 90% of the forced liquidation value of machinery and equipment (\$4,092,000) and the sum of \$1,750,000 and the outstanding balance under term loan B. The New Credit Facility contains certain restrictive covenants including but not limited to certain financial covenants such as minimum EBITDA levels, Fixed Charge Coverage Ratios, Senior Debt to EBITDA ratios and Total Debt to EBITDA ratios. If the Company is not in compliance with the covenants of the New Credit Facility, LaSalle Bank has the right to declare an event of default and all of the outstanding balances owed under the New Credit Facility would become immediately due and payable.

#### FDA Compliance Matters

As described in more detail in Part II - Item 1 - "Legal Proceedings", the Company continues to be subject to potential claims by the FDA. While the Company is cooperating with the FDA and seeking to resolve its ongoing compliance matters, an unfavorable outcome may have a material impact on the Company's operations and its financial condition, results of operations and/or cash flows and may constitute a covenant violation under the New Credit Facility, any or all of which could have a material adverse effect on the Company's liquidity.

#### Facility Expansion

In 2000, the Company began an expansion project at its Decatur, Illinois facility to add capacity to provide Lyophilization manufacturing services, which manufacturing capability the Company currently does not have. Subject to satisfactory resolution of the FDA compliance matters, the Company currently anticipates the completion of the Lyophilization expansion in 2005. As of December 31, 2002, the Company had spent approximately \$16.4 million on the expansion and anticipates the need to spend approximately \$1.0 million of additional funds (excluding capitalized interest) to complete the expansion. The majority of the additional spending will be focused on validation testing of the Lyophilization facility as the major capital equipment items are currently in place. Once the Lyophilization facility is validated, the Company will proceed to produce stability batches to provide the data necessary to allow the Lyophilization facility to be inspected and approved by the FDA.

#### Subordinated Debt

On July 12, 2001, the Company entered into a \$5,000,000 subordinated debt transaction with the Kapoor Trust. The transaction is evidenced by a Convertible Bridge Loan and Warrant Agreement (the "Trust Loan Agreement") in which the Kapoor Trust agreed to provide two separate tranches of funding in the amounts of \$3,000,000 ("Tranche A" which was received on July 13, 2001) and \$2,000,000 ("Tranche B" which was received on August 16, 2001). As part of the consideration provided to the Kapoor Trust for the subordinated debt, the Company issued the Kapoor Trust two warrants which allow the Kapoor Trust to purchase 1,000,000 shares of common stock at a price of \$2.85 per share and another 667,000 shares of common stock at a price of \$2.25 per share. The exercise price for each warrant represented a 25% premium over the share price at the time of the Kapoor Trust's commitment to provide the subordinated debt. All unexercised warrants will expire on December 20, 2006.

Under the terms of the Trust Loan Agreement, the subordinated debt bears interest at prime plus 3%, but interest payments are currently prohibited under the terms of the subordination arrangements described below. The convertible feature of the Trust Loan Agreement, as amended, allows for conversion of the subordinated debt plus interest into common stock of the Company, at a price of \$2.28 per share of common stock for Tranche A and \$1.80 per share of common stock for Tranche B.

In December 2001, the Company entered into a \$3,250,000 five-year loan with NeoPharm, Inc. ("NeoPharm") to fund the Company's efforts to complete its lyophilization facility located in Decatur, Illinois. Prior to its amendment and restatement in connection with the Exchange Transaction, the Promissory Note, dated December 20, 2001 (the "NeoPharm Promissory Note"), provided for interest to accrue at the initial rate of 3.6% and be reset quarterly based upon NeoPharm's average return on its cash and readily tradable long and short-term securities during the previous calendar quarter. The NeoPharm Promissory Note also provided for all principal and accrued interest to be due and payable on or before maturity on December 20, 2006, and required the Company to use the proceeds of the loan solely to validate and complete the lyophilization facility located in Decatur, Illinois. The NeoPharm Promissory Note was executed in conjunction with a Processing Agreement that provides NeoPharm with the option of securing at least 15% of the capacity of the Company's lyophilization facility each year. As of September 30, 2003, the Company was in default under the NeoPharm Promissory Note as a result of its failure to remove all FDA warning letter sanctions related to the Company's Decatur, Illinois facility by June 30, 2003. Dr. John N. Kapoor, the Chairman of the Company's Board of Directors, is also chairman of NeoPharm and holds a substantial stock position in NeoPharm as well as in the Company.

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In connection with the Exchange Transaction, NeoPharm waived all existing defaults under the NeoPharm Promissory Note and the Company and NeoPharm entered into an Amended and Restated Promissory Note dated October 7, 2003 (the "Amended NeoPharm Note"). Interest under the Amended NeoPharm Note accrues at 1.75% above LaSalle Bank's prime rate, but interest payments are currently prohibited under the terms of the subordination arrangements described below. The Amended NeoPharm Note also requires the Company to make quarterly payments of \$150,000 beginning on the last day of the calendar quarter during which all indebtedness under the New Credit Facility has been paid. All remaining amounts owed under the Amended NeoPharm Note are payable at maturity on December 20, 2006. The NeoPharm subordinated debt is subordinated to the Company's bank debt under the New Credit Facility and is senior to the Company's debt to the Kapoor Trust and to the 2003 Subordinated Notes.

Contemporaneous with the completion of the NeoPharm Promissory Note between the Company and NeoPharm in 2001, the Company entered into an agreement with the Kapoor Trust, which amended the Trust Loan Agreement. The amendment extended the maturity of the Trust Loan Agreement from July 12, 2004 to terminate concurrently with the NeoPharm Promissory Note on December 20, 2006. The amendment also made it possible for the Kapoor Trust to convert the interest accrued on the \$3,000,000 tranche, as well as interest on the \$2,000,000 tranche after the original maturity of the Tranche B note, into common stock of the Company. Previously, the Kapoor Trust could only convert the interest accrued on the \$2,000,000 tranche through the original maturity of the Tranche B note.

In connection with the Exchange Transaction, the Kapoor Trust waived all existing defaults under the Trust Loan Agreement and the Company and the Kapoor Trust entered into an amendment to the Trust Loan Agreement. That amendment did not change the interest rate or the maturity date of the loans made under the Trust Loan Agreement. The debt owed under the Trust Loan Agreement is subordinated to the Company's bank debt under the New Credit Facility, the subordinated debt under the Amended NeoPharm Note and the 2003 Subordinated Notes issued in connection with the Exchange Transaction.

As part of the Exchange Transaction, the Company issued the 2003 Subordinated Notes to the Kapoor Trust, Arjun Waney and Argent Fund Management, Ltd. The 2003 Subordinated Notes mature on April 7, 2006 and bear interest at prime plus 1.75%, but interest payments are currently prohibited under the terms of the subordination arrangements described below. The 2003 Subordinated Notes are subordinated to the New Credit Facility and the Amended NeoPharm Note but senior to Trust Loan Agreement with the Kapoor Trust. The Company also issued to the holders of the 2003 Subordinated Notes warrants to purchase an aggregate of

276,714 shares of common stock with an exercise price of \$1.10 per share.

#### Other Indebtedness

In June 1998, the Company entered into a \$3,000,000 mortgage agreement with Standard Mortgage Investors, LLC of which there were outstanding borrowings of \$1,389,000 and \$1,917,000 at September 30, 2003 and December 31, 2002, respectively. The principal balance is payable over 10 years, with the final payment due in June 2007. The mortgage note bears an interest rate of 7.375% and is secured by the real property located in Decatur, Illinois.

#### Preferred Stock and Warrants

In connection with the Exchange Transaction, the Company issued 257,172 shares of Preferred Stock. The Preferred Stock accrues dividends at a rate of 6.0% per annum, which rate is fully cumulative, accrues daily and compounds quarterly, provided that in the event stockholder approval authorizing sufficient shares of Common Stock to be authorized and reserved for conversion of all of the Preferred Stock and warrants issued in connection with the Exchange Transaction ("Stockholder Approval") has not been received by October 7, 2004, such rate is to increase to 10.0% until Stockholder Approval has been received and sufficient shares of Common Stock are authorized and reserved. Subject to certain limitations, on October 31, 2011, the Company is required to redeem all shares of Preferred Stock for an amount equal to \$100 per share, as may be adjusted from time to time as set forth in the Articles of Incorporation (the "Articles of Incorporation") of the Company (the "Stated Value"), plus all accrued but unpaid dividends on such share. Shares of Preferred Stock have liquidation rights in preference over junior securities, including the Common Stock, and have certain antidilution protections. The Preferred Stock is convertible at any time into a number of shares of Common Stock equal to the quotient obtained by dividing (x) the Stated Value plus any accrued but unpaid dividends by (y) \$0.75, as such numbers may be adjusted from time to time pursuant to the terms of the Articles of Amendment. Provided that Stockholder Approval has been received and sufficient shares of Common Stock are authorized and reserved for conversion, all shares of Preferred Stock shall convert to shares of Common Stock on the earlier to occur of (i) October 8, 2006 and (ii) the date on which the closing price per share of Common Stock for at least 20 consecutive trading days immediately preceding such date exceeds \$4.00 per share. For more information regarding the Preferred Stock, including the voting rights of the Preferred Stock, see Note O - "Subsequent Events" - to the Condensed Consolidated Financial Statements.

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The warrants issued in connection with the Exchange Transaction are exercisable at any time prior to expiration on October 7, 2006. Of those warrants, warrants for 8,572,400 shares of common stock have an exercise price of \$1.00 per share and warrants for the remaining 1,236,714 shares of common stock have an exercise price of \$1.10 per share.

#### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The Company is subject to market risk associated with changes in interest rates. As previously disclosed, all debt under the Company's Credit Agreement with The Northern Trust Company, which bore interest at prime plus 3.0%, was retired as part of the Exchange Transaction. The Company's interest rate exposure currently involves four debt instruments. Term loan debt under the New Credit Agreement, as well as debt under the Amended NeoPharm Note and the 2003 Subordinated Promissory Notes, bears interest at prime plus 1.75%. Revolver debt under the New Credit Agreement bears interest at prime plus 1.50%. The subordinated convertible debentures issued to the Kapoor Trust under the Trust Loan Agreement bear interest at prime plus 3.0%. All of the Company's remaining long-term debt is at fixed interest rates. Management estimates that a change of 1.0% in its variable rate debt from the interest rates in effect at September 30, 2003 would result in a \$230,000 change in annual interest expense.

The Company's financial instruments consist mainly of cash, accounts receivable, accounts payable and debt. The carrying amounts of these instruments, except debt, approximate fair value due to their short-term nature. The carrying amounts of the Company's bank borrowings under its debt instruments approximate fair value because the interest rates are reset periodically to reflect current market rates.

The fair value of the debt obligations approximated the recorded value as of September 30, 2003.

#### ITEM 4. CONTROLS AND PROCEDURES

The Company maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in the Company's Exchange Act reports is recorded, processed, summarized and reported within the periods specified in the SEC's rules and forms and that such information is accumulated and communicated to the Company's management including its Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Based on their evaluation of the Company's disclosure controls and procedures, as required by Rule 13a-15(b) under the Exchange Act, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures are effective in timely communicating to them the material information relating to the Company required to be included in the Company's periodic SEC filings.

As discussed in greater detail in the Company's Report on Form 8-K dated May 1, 2003, Deloitte & Touche LLP ("Deloitte") informed the Company that, in connection with its audit of the Company's consolidated financial statements for the year ended December 31, 2002, it noted certain matters involving the Company's internal controls that Deloitte considered to be material weaknesses. Although the Company does not necessarily agree with Deloitte's judgment that there existed material weaknesses in the Company's internal controls, the Company is in the process of implementing procedures designed to address all relevant internal control issues. In the second quarter of 2003, the Company updated its internal control policies and procedures, expanded its interim evaluation of accounts receivable for purposes of determining the allowance for doubtful accounts and reassigned certain personnel to strengthen the accounting for fixed assets. In the third quarter of 2003, the Company completed a detailed inventory of its fixed assets and began the process of reconciling this inventory. There were no other changes in the Company's internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

#### PART II. OTHER INFORMATION

##### ITEM 1. LEGAL PROCEEDINGS

On March 27, 2002, the Company received a letter informing it that the staff of the SEC's regional office in Denver, Colorado, would recommend to the SEC that it bring an enforcement action against the Company and seek an order requiring the Company to be enjoined from engaging in certain conduct. The staff alleged that the Company misstated its income for fiscal years 2000 and 2001 by allegedly failing to reserve for doubtful accounts receivable and overstating its accounts receivable balance as of December 31, 2000. The staff alleged that internal control and books and records deficiencies prevented the Company from accurately recording,

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reconciling and aging its accounts receivable. The Company also learned that certain of its former officers, as well as a then current employee had received similar notifications. Subsequent to the issuance of the Company's consolidated financial statements for the year ended December 31, 2001, management of the Company determined it needed to restate the Company's financial statements for 2000 and 2001 to record a \$7.5 million increase to the allowance for doubtful accounts as of December 31, 2000, which it had originally recorded as of March 31, 2001.

On September 25, 2003, the Company consented to the entry of an administrative cease and desist order to resolve the issues arising from the staff's investigation and proposed enforcement action as discussed above. Without the Company admitting or denying the findings set forth therein, the consent order finds that the Company failed to promptly and completely record and reconcile cash and credit remittances, including those from its top five customers, to invoices posted in its accounts receivable sub-ledger. According to the findings in the consent order, the Company's problems resulted from, among other things, internal control and books and records deficiencies that prevented the Company from accurately recording, reconciling and aging its



receivables. The consent order finds that the Company's 2000 Form 10-K and first quarter 2001 Form 10-Q misstated its account receivable balance or, alternatively, failed to disclose the impairment of its accounts receivable and that its first quarter 2001 Form 10-Q inaccurately attributed the increased accounts receivable reserve to a change in estimate based on recent collection efforts, in violation of Section 13(a) of the Exchange Act and rules 12b-20, 13a-1 and 13a-13 thereunder. The consent order also finds that the Company failed to keep accurate books and records and failed to devise and maintain a system of adequate internal accounting controls with respect to its accounts receivable in violation of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. The consent order does not impose a monetary penalty against the Company or require any additional restatement of the Company's financial statements. The consent order contains an additional commitment by the Company to do the following: (A) appoint a special committee comprised entirely of outside directors, (B) within 30 days after entry of the order, have the special committee retain a qualified independent consultant ("consultant") acceptable to the staff to perform a test of the Company's material internal controls, practices, and policies related to accounts receivable, and (C) within 180 days, have the consultant present his or her findings to the commission for review to provide assurance that the Company is keeping accurate books and records and has devised and maintained a system of adequate internal accounting controls with respect to the Company's accounts receivables. On October 27, 2003, the Company engaged Jefferson Wells, International to serve as consultant in this capacity. The Company intends to continue to work with the consultant and the SEC through this review process. As a result, the Company may incur additional costs and expenses in connection with this proceeding.

In October 2000, the FDA issued a warning letter to the Company following the FDA's routine cGMP inspection of the Company's Decatur manufacturing facilities. An FDA warning letter is intended to provide notice to a company of violations of the laws administered by the FDA. Its primary purpose is to elicit voluntary corrective action. The letter warns that if voluntary action is not forthcoming, the FDA may use other legal means to compel compliance. These include seizure of products and/or injunction of the company and responsible individuals. This letter addressed several deviations from regulatory requirements including cleaning validations and general documentation issues and requested corrective actions be undertaken by the Company. The Company initiated corrective actions and responded to the warning letter. Subsequently, the FDA conducted another inspection in late 2001 and identified additional deviations from regulatory requirements including cleaning validations and process controls. This led to the FDA leaving the warning letter in place and issuing a Form 483 to document its findings. While no further correspondence was received from the FDA, the Company responded to the inspectional findings. This response described the Company's plan for addressing the issues raised by the FDA and included improved cleaning validation, enhanced process controls and approximately \$2.0 million of capital improvements. In August, 2002 the FDA conducted another inspection of the Decatur facility, which also identified deviations from cGMPs. The Company responded to these observations in September, 2002. In response to the Company's actions, the FDA conducted another inspection of the Decatur facility during the period December 10, 2002 to February 6, 2003. This inspection also identified deviations from regulatory requirements including the manner in which the Company processes and investigates manufacturing discrepancies and failures, customer complaints and the thoroughness of equipment cleaning validations. Deviations identified during this inspection had been raised in previous FDA inspections. The Company has responded to these latest findings in writing and in a meeting with the FDA in March 2003. The Company set forth its plan for implementing comprehensive corrective actions and has provided progress reports to the FDA on April 15, May 15 and June 15, 2003.

The Company continues to have discussions with the FDA relating to its ongoing compliance matters and expects that the Company will complete its current corrective plan for the Decatur facility in the fourth quarter of 2003. The Company expects that the FDA will reinspect its Decatur facility during the fourth quarter of 2003 or first quarter of 2004.

Upon completion of the reinspection, the FDA may take any of the following actions: (i) find that the Decatur facility is in substantial compliance; (ii) require the Company to undertake further corrective actions, which could include a recall of certain products, and then conduct another inspection to assess the success of those efforts; (iii) seek to enjoin the Company from further violations, which may include temporary suspension of

some or all operations and potential monetary penalties; or (iv) take other enforcement action which may include seizure of Company products. At this time, it is not possible to predict the FDA's course of action.

FDA approval is required before any drug can be manufactured and marketed. New drugs require the filing of a New Drug Application ("NDA"), including clinical studies demonstrating the safety and efficacy of the drug. Generic drugs, which are equivalents of existing, off-patent brand name drugs, require the filing of an Abbreviated New Drug Application ("ANDA"). The Company believes that unless and until the issues identified by the FDA have been successfully corrected and the corrections have been verified through reinspection, it is doubtful that the FDA will approve any NDAs or ANDAs that may be submitted by the Company for products to be manufactured at its Decatur facility. This has adversely impacted, and is likely to continue to adversely impact, the Company's ability to grow sales. However, the Company believes that unless and until the FDA chooses option (iii) or (iv), the Company will be able to continue manufacturing and distributing its current product lines.

If the FDA chooses option (iii) or (iv), such action could significantly impair the Company's ability to continue to manufacture and distribute its current product line and generate cash from its operations and could result in a covenant violation under the Company's senior debt, any or all of which would have a material adverse effect on the Company's liquidity. Any monetary penalty assessed by the FDA also could have a material adverse effect on the Company's liquidity.

On August 9, 2003, Novadaq Technologies, Inc. ("Novadaq") notified the Company that it had requested arbitration with the International Court of Arbitration ("ICA") related to a dispute between the Company and Novadaq regarding the issuance of a Right of Reference to Novadaq from Akorn for Novadaq's NDA and Drug Master File ("DMF") for specified indications for Akorn's drug IC Green. In its request for arbitration, Novadaq asserts that Akorn is obligated to provide the Right of Reference as described above pursuant to an amendment dated September 26, 2002 to the January 4, 2002 Supply Agreement between the two companies. Akorn does not believe it is obligated to provide the Right of Reference which, if provided, would likely reduce the required amount of time for clinical trials and reduce Novadaq's cost of developing a product for macular degeneration. The Company also is contemplating the possible development of a separate product for macular degeneration which, if developed, could face competition from any product developed by Novadaq. Even if the Right of Reference is provided, the approval process for such a product is expected to take several years. On October 17, 2003, the ICA notified the Company that it decided that this matter shall proceed to arbitration. The Company is in the process of preparing for arbitration on this matter and will defend itself vigorously.

In connection with the request for arbitration described above, on August 22, 2003, Novadaq filed a lawsuit and a Notice of Emergency Motion in the Circuit Court of Cook County, Illinois, County Department, Chancery Division for interim relief related to the issuance of the Right of Reference from Akorn to Novadaq. On September 22, 2003, Akorn and Novadaq entered into an Agreed Order whereby Akorn would provide the requested Right of Reference to Novadaq. The Agreed Order terminates upon the settlement of the dispute between the parties or in the event that the final disposition of the arbitration filed with the ICA results in a final decision against Novadaq or a failure to hold that Novadaq has a right to the Right of Reference.

On October 8, 2003, the Company, pursuant to the terms of the Letter Agreement dated September 26, 2002 between the Company and AEG Partners LLC, as amended (the "AEG Letter Agreement"), terminated its consultant AEG Partners LLC ("AEG"). AEG contends that, as a result of the Exchange Transaction, the Company must pay it a "success fee" consisting of \$686,000 and a warrant to purchase 1,250,000 shares of the Company's common stock at \$1.00 per share, and adjust the terms of the warrant, pursuant to certain anti-dilution provisions, to take into account the impact of the convertible preferred stock issued in connection with the Exchange Transaction. The Company disputes that AEG is owed this success fee. Pursuant to the AEG Letter Agreement, the Company and AEG are trying to resolve the dispute. If this fails, the AEG Letter Agreement provides for mandatory and binding arbitration. If this matter proceeds to arbitration, the Company will vigorously defend itself and assert any appropriate counterclaims in regards to this matter.

On October 14, 2003, Leerink Swann & Co., Inc. ("Leerink") filed a complaint in the Supreme Court of the State of New York alleging a breach of contract for

the payment of fees by the Company for investment banking services. Leerink alleged the Company was obligated to pay \$1,765,032 pursuant to a written agreement dated May 8, 2003 between Leerink and the Company (the "Leerink Agreement"). The Company disputed that Leerink was owed \$1,765,032. On November 14, 2003, Leerink and the Company reached a tentative settlement where, among other things, the Company will pay \$750,000 to Leerink, and the Company will extend the Leerink Agreement for an additional year. The settlement is contingent upon the execution of a written settlement agreement, at which time Leerink will dismiss the complaint.

The Company is a party to legal proceedings and potential claims arising in the ordinary course of its business. The amount, if any, of ultimate liability with respect to such matters cannot be determined. Despite the inherent uncertainties of litigation, management of

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the Company at this time does not believe that such proceedings will have a material adverse impact on the financial condition, results of operations, or cash flows of the Company.

#### ITEM 2. CHANGES IN SECURITIES AND USE OF PROCEEDS

The Company did not issue any securities during the three months ended September 30, 2003. For a discussion of the Company's Exchange Transaction completed on October 7, 2003, see Note H - "Financing Arrangements" - to the Condensed Consolidated Financial Statements.

#### ITEM 3. DEFAULT UPON SENIOR SECURITIES

As of September 30, 2003, the Company was in default under certain covenants in its senior credit facility with the Northern Trust Company, including the failure to make a \$39,200,000 principal payment that was due on August 31, 2002, as well as under a cross-default to other indebtedness of the Company. That default was eliminated on October 7, 2003 when the senior credit facility was extinguished as a result of the Exchange Transaction.

As of September 30, 2003, the Company also was in default under (i) the NeoPharm Promissory Note in the principal amount of \$3,250,000 as a result of the Company's failure to remove all FDA warning letter sanctions related to the Company's Decatur, Illinois facility by June 30, 2003 and (ii) the Trust Loan Agreement relating to the \$5,000,000 subordinated loan made to the Company by the Kapoor Trust as a result of a cross-default to the NeoPharm Promissory Note. These defaults were waived in connection with the closing of the Exchange Transaction.

#### ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of security holders during the quarter ended September 30, 2003.

#### ITEM 5. OTHER INFORMATION

On November 6, 2003 the Board of Directors of the Company held a meeting at the Company's principal office to, among other items, discuss the composition of the Company's Board of Directors. At the meeting, the Board of Directors increased the number of directors of the Company from five to six, accepted the resignations of Doyle Gaw and Dan Bruhl as directors of the Company, and appointed each of Arthur S. Przybyl, Jerry Treppel and Arjun C. Waney to fill the vacancies on the Board of Directors until their earlier removal, resignation or the selection of their successors. Mr. Przybyl is the Chief Executive Officer of the Company. Mr. Waney may be deemed to beneficially own more than 10% of the outstanding shares of common stock of the Company.

As previously disclosed by the Company in its Report on Form 8-K filed on October 29, 2003, the Company, upon recommendation of the Audit Committee of its Board of Directors and approval by its Board of Directors, engaged BDO Seidman, LLP on October 22, 2003 as the Company's principal accountants to audit the financial statements of the Company for its fiscal year ending December 31, 2003, and to review the financial statements of the Company for the fiscal quarters ended March 31, June 30 and September 30, 2003.

#### ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits

(3.1) Composite Articles of Incorporation of the Company, incorporated by reference to the Company's Form 8-K filed with the SEC on October 24, 2003

(10.1) Form of Indemnity Agreement dated October 7, 2003 between the Company and each of the Directors

(10.2) Form of Amended and Restated Promissory Note dated October 7, 2003 issued to NeoPharm

(10.3) Form of Reaffirmation of Subordination and Intercreditor Agreement from the Kapoor Trust to NeoPharm

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(10.4) Form of Subordination and Intercreditor Agreement dated October 7, 2003 among the Company, Akorn (New Jersey), Inc., LaSalle Bank and NeoPharm

(10.5) Form of Fourth Amendment to Convertible Bridge Loan and Warrant Agreement dated October 7, 2003 between the Company and the Kapoor Trust

(10.6) Form of Acknowledgment of Subordination dated October 7, 2003 between the Company and the Kapoor Trust

(10.7) Form of Subordination and Intercreditor Agreement dated October 7, 2003 among the Company, Akorn (New Jersey), Inc., LaSalle Bank and the Kapoor Trust

(10.8) Form of Subordination and Intercreditor Agreement dated October 7, 2003 among the Company, Akorn (New Jersey), Inc., LaSalle Bank and the Kapoor Trust

(10.9) Form of Subordination and Intercreditor Agreement dated October 7, 2003 among the Company, Akorn (New Jersey), Inc., LaSalle Bank and Arjun Waney

(10.10) Form of Subordination and Intercreditor Agreement dated October 7, 2003 among the Company, Akorn (New Jersey), Inc., LaSalle Bank and Argent Fund Management Ltd.

(31.1) Certification of Chief Executive Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934

(31.2) Certification of Chief Financial Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934

(32.1) Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. ss. 1350, as adopted pursuant to ss. 906 of the Sarbanes-Oxley Act of 2002

(b) Reports on Form 8-K

During the quarterly period ended September 30, 2003, the Company filed the following reports on Form 8-K:

On July 7, 2003, the Company filed a Form 8-K reporting that its senior lenders intended to extend the forbearance agreement expiration from June 30, 2003 to July 31, 2003 and to make an additional \$1.0 million available under the Company's credit line.

On September 29, 2003 the Company filed a Form 8-K reporting that it had entered into a Preferred Stock and Note Purchase Agreement with a group of inside and outside investors to receive an infusion of up to \$40.5 million in new capital consisting of \$25.7 million in Series A 6% Participating Convertible Preferred Stock and Warrants, a \$2.8 million subordinated promissory note and up to \$12.0 million in senior secured debt from LaSalle Bank.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

AKORN, INC.

/s/ BERNARD J. POTHAST

-----  
Bernard J. Pothast  
Vice President, Chief Financial  
Officer and Secretary  
(Duly Authorized and Principal  
Financial Officer)

Date: November 19, 2003

## INDEMNITY AGREEMENT

This INDEMNITY AGREEMENT is made as of October 7, 2003, by and between Akorn, Inc., a Louisiana corporation (the "Corporation"), and [Director] ("Indemnitee").

In consideration of Indemnitee's continued service after the date hereof, the Corporation and Indemnitee do hereby agree as follows:

1. AGREEMENT TO SERVE. Indemnitee shall serve or continue to serve as a director of the Corporation, and as a director or officer of any other corporation, subsidiary, partnership, joint venture, trust or other enterprise of which he is serving at the request of the Corporation, and agrees to serve in such capacities for so long as he is duly elected or appointed and qualified or until such earlier time as he tenders his resignation in writing.

2. DEFINITIONS. As used in this Agreement:

(a) The term "Claim" means any threatened, pending or completed claim, action, suit or proceeding, including appeals, whether civil, criminal, administrative or investigative and whether made judicially or extra-judicially, including any action by or in the right of the Corporation, or any separate issue or matter therein, as the context requires.

(b) The term "Determining Body" means (i) those members of the Board of Directors who are not parties to the Claim for which indemnification is being sought ("Impartial Directors"), if there are at least three Impartial Directors, or (ii) a committee of at least three directors appointed by the Board of Directors (regardless whether the members of the Board of Directors voting on such appointment are Impartial Directors) and composed of Impartial Directors or (iii) if there are fewer than three Impartial Directors or if the Board of Directors or a committee appointed thereby so directs (regardless of whether the members thereof are Impartial Directors), independent legal counsel, which may be the regular outside counsel of the Corporation, as designated by the Impartial Directors or, if no such directors exist, the full Board of Directors.

(c) The term "Disbursing Officer" means the President of the Corporation or, if the President has a direct or indirect interest in the Claim for which indemnification is being sought, any officer who does not have such an interest and who is designated by the President to be the Disbursing Officer with respect to indemnification requests related to the Claim, which designation shall be made promptly after receipt of the initial request for indemnification with respect to such Claim.

(d) The term "Expenses" means any expenses or costs including, without limitation, attorney's fees, judgments, punitive or exemplary damages, fines, amounts paid in settlement or excise taxes payable with respect to any such expenses or costs.

(e) The term "Insurance Policy" means the Directors and Officers Liability Policy that the Corporation has obtained from Executive Liability Underwriters, on behalf of its directors and officers for the policy period commencing April 24, 2003 and ending April 24, 2004.

3. LIMITATION OF LIABILITY. Except as otherwise prohibited by law, to the fullest extent permitted by Article XII of the Articles of Incorporation of the Corporation (as in effect on the date hereof), Indemnitee shall not be liable for any breach of his fiduciary duty. If and to the extent such provisions are amended to permit further limitations of liability, except as otherwise prohibited by law, Indemnitee shall not be liable for any breach of his fiduciary duty to the fullest extent permitted after any such amendment.

4. MAINTENANCE OF INSURANCE. The Corporation represents and warrants that it presently maintains in force and effect a directors and officers liability insurance policy with coverage comparable to the coverage provided under the Insurance Policy, and Indemnitee represents and warrants that he has been furnished with a copy of the policy currently in effect and of the Insurance Policy. The Corporation hereby agrees that, so long as Indemnitee shall continue to serve in any capacity referred to in Section 5(a) hereof and thereafter so long as Indemnitee shall be subject to any possible Claim, the Corporation shall use its commercially reasonable best efforts to purchase and maintain in effect for the benefit of Indemnitee one or more valid and enforceable policies of

directors and officers liability insurance providing, in all respects, coverage at least as beneficial to Indemnatee as that provided pursuant to the Insurance Policy.

#### 5. ADDITIONAL INDEMNITY.

(a) Except as otherwise prohibited by law, to the extent any Expenses incurred by Indemnatee are in excess of the amounts reimbursed or indemnified pursuant to the provisions of Section 4 hereof, the Corporation shall indemnify and hold harmless Indemnatee against any Expenses actually and reasonably incurred by Indemnatee (as they are incurred) in connection with any Claim against Indemnatee, or involving Indemnatee solely as a witness or person required to give evidence, by reason of Indemnatee's position as a (i) director or officer of the Corporation, (ii) director or officer of any subsidiary of the Corporation or as a fiduciary with respect to any employee benefit plan of the Corporation, or (iii) director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other for-profit or not-for-profit entity or enterprise, if such position is or was held at the request of the Corporation, whether relating to service in such position before or after the effective date of this Agreement, if (A) Indemnatee is successful in his defense of the Claim on the merits or otherwise or (B) Indemnatee has been found by the Determining Body to have met the Standard of Conduct (as hereinafter defined); provided that (1) the amount of Expenses for which the Corporation shall indemnify Indemnatee may be reduced by the Determining Body to such amount as it deems proper if it determines that the Claim involved the receipt of personal benefit by Indemnatee, and (2) no indemnification shall be made in respect of any Claim as to which Indemnatee shall have been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable for willful or intentional misconduct in the performance of his duty to the Corporation or to have obtained an improper personal benefit, unless, and only to the extent that, a court shall determine upon application that, despite the adjudication of liability but

in view of all the circumstances of the case, Indemnatee is fairly and reasonably entitled to indemnity for such Expenses which the court shall deem proper.

(b) For purposes of this Agreement, the "Standard of Conduct" is met when conduct by Indemnatee with respect to which a Claim is asserted was conduct performed in good faith that he reasonably believed to be in, or not opposed to, the best interest of the Corporation, and, in the case of a Claim which is a criminal action or proceeding, conduct that Indemnatee had no reasonable cause to believe was unlawful. The termination of any Claim by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnatee did not meet the Standard of Conduct.

(c) Promptly upon becoming aware of the existence of any Claim as to which Indemnatee may be indemnified for Expenses and as to which Indemnatee desires to obtain indemnification, Indemnatee shall notify the President of the Corporation, but the failure to promptly notify the President shall not relieve the Corporation from any obligation hereunder, except and to the extent that such failure has materially and irrevocably harmed the Corporation's ability to defend against such Claim pursuant to Section 5(f) hereof. Upon receipt of such request, the President shall promptly advise the members of the Board of Directors of the request and that the establishment of a Determining Body with respect thereto will be a matter to be considered at the next regularly scheduled meeting of the Board. If a meeting of the Board of Directors is not regularly scheduled within 120 calendar days of the date the President receives notice of the Claim, the President shall cause a special meeting of the Board of Directors to be called within such period in accordance with the provisions of the Corporation's By-laws. After the Determining Body has been established, the President shall inform Indemnatee of the constitution of the Determining Body and Indemnatee shall provide the Determining Body with all facts relevant to the Claim known to him, and deliver to the Determining Body all documents relevant to the Claim in his possession. Before the 60th day (the "Determination Date") after its receipt from Indemnatee of such information, together with such additional information as the Determining Body may reasonably request of Indemnatee prior to such date (the receipt of which shall not begin a new 60-day period), the Determining Body shall determine whether or not Indemnatee has met the Standard of Conduct and shall advise Indemnatee of its determination. If Indemnatee shall have supplied the Determining Body with all relevant information, including all additional information reasonably requested by the Determining Body, any failure of the Determining Body to make a determination by or on the Determination Date as to whether the Standard of Conduct was met shall

be deemed to be a determination that the Standard of Conduct was met by Indemnitee.

(d) If at any time during the 60-day period ending on the Determination Date, Indemnitee becomes aware of any relevant facts or documents not theretofore provided by him to the Determining Body, Indemnitee shall promptly inform the Determining Body of such facts or documents, unless the Determining Body has obtained such facts or documents from another source. The provision of such facts to the Determining Body shall not begin a new 60-day period.

(e) The Determining Body shall have no power to revoke a determination that Indemnitee met the Standard of Conduct unless Indemnitee (i) submits fraudulent information to the Determining Body at any time during the 60 days prior to the Determination Date or (ii) fails

to comply with the provisions of Sections 5(c) or 5(d) hereof, including without limitation Indemnitee's obligation to submit information or documents relevant to the Claim reasonably requested by the Determining Body prior to the Determination Date.

(f) In the case of any Claim not involving any proposed, threatened or pending criminal proceeding,

(i) if Indemnitee has, in the judgment of the Determining Body, met the Standard of Conduct, the Corporation may, except as otherwise provided below, individually or jointly with any other indemnifying party similarly notified, assume the defense thereof with counsel reasonably satisfactory to Indemnitee. If the Corporation assumes the defense of the Claim, it shall keep Indemnitee informed as to the progress of such defense so that Indemnitee may make an informed decision as to the need for separate counsel. After notice from the Corporation that it is assuming the defense of the Claim, it will not be liable to Indemnitee under this Agreement for any legal or other expenses subsequently incurred by Indemnitee in connection with the defense other than reasonable costs of investigation or as otherwise provided below. Indemnitee shall have the right to employ his own counsel in such action, suit or proceeding but the fees and expenses of such counsel incurred after such notice from the Corporation of its assumption of the defense shall be at the expense of Indemnitee unless (A) the employment of counsel by Indemnitee has been authorized by the Determining Body, (B) Indemnitee shall have concluded reasonably that there may be a conflict of interest between the Corporation and Indemnitee in the conduct of the defense of such action or (C) the Corporation shall not in fact have employed counsel to assume the defense of such action, in each of which cases the fees and expenses of counsel shall be at the expense of the Corporation. The Corporation shall not be entitled to assume the defense of any action, suit or proceeding brought by or in the right of the Corporation or as to which Indemnitee shall have made the conclusion provided for in (B) above; and

(ii) the Corporation shall fairly consider any proposals by Indemnitee for settlement of the Claim. If the Corporation proposes a settlement of the Claim and such settlement is acceptable to the person asserting the Claim, or the Corporation believes a settlement proposed by the person asserting the Claim should be accepted, it shall inform Indemnitee of the terms of such proposed settlement and shall fix a reasonable date by which Indemnitee shall respond. If Indemnitee agrees to such terms, he shall execute such documents as shall be necessary to make final the settlement. If Indemnitee does not agree with such terms, Indemnitee may proceed with the defense of the Claim in any manner he chooses, provided that if Indemnitee is not successful on the merits or otherwise, the Corporation's obligation to indemnify such Indemnitee as to any Expenses incurred following his disagreement with the Corporation shall be limited to the lesser of (A) the total Expenses incurred by Indemnitee following his decision not to agree to such proposed settlement or (B) the amount that the Corporation would have paid pursuant to the terms of the proposed settlement. If, however, the proposed settlement would impose upon Indemnitee any requirement to act or refrain from acting that would materially interfere with the conduct of Indemnitee's affairs, Indemnitee may refuse such settlement and continue his defense of the Claim, if he so desires, at the Corporation's expense in accordance with the terms and conditions of this Agreement without regard to the limitations imposed by the immediately preceding sentence. In any event, the

Corporation shall not be obligated to indemnify Indemnitee for any amount paid in a settlement that the Corporation has not approved.



(g) In the case of any Claim involving a proposed, threatened or pending criminal proceeding, Indemnitee shall be entitled to conduct the defense of the Claim with counsel of his choice and to make all decisions with respect thereto, provided, however, that the Corporation shall not be obliged to indemnify Indemnitee for any amount paid in settlement of such a Claim unless the Corporation has approved such settlement.

(h) After notifying the Corporation of the existence of a Claim, Indemnitee may from time to time request the Corporation to pay the Expenses (other than judgments, fines, penalties or amounts paid in settlement) that he incurs in pursuing a defense of the Claim prior to the time that the Determining Body determines whether the Standard of Conduct has been met. The Disbursing Officer shall pay to Indemnitee the amount requested (regardless of Indemnitee's apparent ability to repay such amount) upon receipt of an undertaking by or on behalf of Indemnitee to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation under the circumstances, provided, however, that if the Disbursing Officer does not believe such amount to be reasonable, he shall advance the amount deemed by him to be reasonable and Indemnitee may apply directly to the Determining Body for the remainder of the amount requested.

(i) After the Determining Body has determined that the Standard of Conduct has been met, for so long as and to the extent that the Corporation is required to indemnify Indemnitee under this Agreement, the provisions of Section 5(h) hereof shall continue to apply with respect to Expenses incurred after such time except that (i) no undertaking shall be required of Indemnitee and (ii) the Disbursing Officer shall pay to Indemnitee the amount of any fines, penalties or judgments against him which have become final and for which he is entitled to indemnification hereunder, and any amount of indemnification ordered to be paid to him by a court.

(j) Any determination by the Corporation with respect to settlement of a Claim shall be made by the Determining Body.

(k) All determinations and judgments made by the Determining Body hereunder shall be made in good faith.

## 6. ENFORCEMENT.

(a) The rights provided by this Agreement shall be enforceable by Indemnitee in any court of competent jurisdiction.

(b) If Indemnitee seeks a judicial adjudication of his rights under, or to recover damages for breach of, this Agreement, Indemnitee shall be entitled to recover from the Corporation, and shall be indemnified by the Corporation against, any and all expenses actually and reasonably incurred by him in connection with such proceeding, but only if he prevails therein. If it shall be determined that Indemnitee is entitled to receive part but not all of the relief sought, then Indemnitee shall be entitled to be reimbursed for all expenses incurred by him in connection with such judicial adjudication if the amount to which he is determined to be entitled

exceeds 50% of the amount of his claim. Otherwise, the expenses incurred by Indemnitee in connection with such judicial adjudication shall be appropriately prorated.

(c) In any judicial proceeding described in this Section 6, the Corporation shall bear the burden of proving that Indemnitee is not entitled to the relief sought.

7. RELEASES. The Corporation, for itself and each of its affiliates, does hereby release, acquit and forever discharge Indemnitee and all of Indemnitee's agents, attorneys, representatives, assigns and successors from any and all claims, demands, rights, causes of actions, obligations, damages, costs, expenses, fees, compensation, and liabilities of any nature whatsoever which relate to or arise out of (a) the Preferred Stock and Note Purchase Agreement, (the "Purchase Agreement") dated September 25, 2003 among the Corporation, The John N. Kapoor Trust dtd 9/20/89, Arthur S. Przybyl, Jerry Treppel, Abu Alam, John Sabat, Neil Shanahan, Shritin Shah, JRJay Public Investments, LLC, Pequot Healthcare Fund, L.P., Pequot Healthcare Institutional Funds, L.P., Pequot Healthcare Offshore Fund, Inc., Pequot Scout Fund, L.P., Pequot Navigator Onshore Fund, L.P., Arjun Waney, Jai Waney, Arun K. Puri Living Trust, Argent Fund Management Ltd., Kapwan Investments, LLP and Gulu Waney, or any of the agreements, instruments and transactions contemplated by the Purchase Agreement, including without limitation those defined in the Purchase Agreement as the

Assignment and Acceptance Agreement, the Cash Payment, the Guaranty Warrant Agreement, the Guaranty Warrants, the Note Warrant Agreement, the Note Warrants, the Preferred Stock Warrant Agreement, the Preferred Stock Warrants, the Purchased Notes, the Registration Rights Agreement and the Registration Rights Amendment or any transaction contemplated thereby and (b) any and all actions, failures to take action, facts, circumstances or events, whether known or unknown, occurring or existing prior to the date of this Agreement, unless in the case of (a) or (b) above the Determining Body has reasonably made a fact-based determination that the Indemnitee has failed to meet the Standard of Conduct. The agreements made in this Section 7 shall not be construed as any admission of liability or fault or with respect to the amount of any damages, if any, sustained by any party to this Agreement.

8. NOTICES. Any notice or other communications ("Notice") required or permitted by this Agreement shall be in writing and shall be deemed given to a party when (i) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (ii) sent by facsimile with confirmation of transmission by the transmitting equipment; or (iii) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses or facsimile numbers and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number or person as a party may designate by notice to the other parties):

(a) If to Indemnitee:

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(b) If to the Corporation, the Determining Body or the Disbursing Officer:

Akorn, Inc.  
2500 Milbrook Drive  
Buffalo Grove, Illinois 60089  
Fax: (847) 279-6191

9. SAVING CLAUSE. If any provision of this Agreement is determined by a court having jurisdiction over the matter to violate or conflict with applicable law, the court shall be empowered to modify or reform such provision so that, as modified or reformed, such provision provides the maximum indemnification permitted by law and such provision, as so modified or reformed, and the balance of this Agreement, shall be applied in accordance with their terms. Without limiting the generality of the foregoing, if any portion of this Agreement shall be invalidated on any ground, the Corporation shall nevertheless indemnify Indemnitee to the full extent permitted by any applicable portion of this Agreement that shall not have been invalidated and to the full extent permitted by law with respect to that portion that has been invalidated.

10. NON-EXCLUSIVITY. (a) The indemnification and advancement of Expenses provided by or granted pursuant to this Agreement shall not be deemed exclusive of any other rights to which Indemnitee is or may become entitled under any statute, articles of incorporation, by-law, authorization of stockholders or directors, agreement, or otherwise.

(b) It is the intent of the Corporation by this Agreement to indemnify and hold harmless Indemnitee to the fullest extent permitted by law, so that if applicable law would permit the Corporation to provide broader indemnification rights than are currently permitted, the Corporation shall indemnify and hold harmless Indemnitee to the fullest extent permitted by applicable law notwithstanding that the other terms of this Agreement would provide for lesser indemnification.

11. CONFIDENTIALITY. The Corporation and Indemnitee shall keep confidential to the extent permitted by law and their fiduciary obligations all information and determinations provided pursuant to or arising out of the operations of this Agreement and the Corporation and Indemnitee shall instruct its or his agents and employees to do likewise.

12. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute an original but all of which taken together shall be deemed to constitute a single instrument.

13. APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Louisiana.

14. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon Indemnatee and upon the Corporation, its successors and assigns, and shall inure to the benefit of Indemnatee's heirs, personal representatives, and assigns and to the benefit of the Corporation, its successors and assigns.

15. AMENDMENT. No amendment, modification, termination or cancellation of this Agreement shall be effective unless made in writing signed by the Corporation and Indemnatee.

Notwithstanding any amendment, modification, termination or cancellation of this Agreement or any portion hereof, Indemnatee shall be entitled to indemnification in accordance with the provisions hereof with respect to any acts or omissions of Indemnatee which occur prior to such amendment, modification, termination or cancellation.

16. GENDER. All pronouns and variations thereof used in this Agreement shall be deemed to refer to the masculine, feminine or neuter gender, singular or plural, as the identity of the person, persons, entity or entities referred to may require.

IN WITNESS WHEREOF, the parties hereto have caused this Indemnity Agreement to be duly executed and signed as of the date and year first above written.

AKORN, INC.

By:

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Name: Bernard J. Pothast  
Title: Senior Vice President, Chief  
Financial Officer, Secretary  
and Treasurer

INDEMNITEE:

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THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR ANY STATE SECURITIES LAWS. THIS NOTE MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, OFFERED, PLEDGED OR OTHERWISE DISTRIBUTED UNLESS REGISTERED UNDER THE SECURITIES ACT OF 1933 AND APPLICABLE STATE SECURITIES LAWS OR SUCH SALE, TRANSFER, ASSIGNMENT, OFFER, PLEDGE OR OTHER DISTRIBUTION FOR VALUE IS EXEMPT FROM THE REGISTRATION REQUIREMENTS OF SUCH ACT AND SUCH LAWS.

THIS INSTRUMENT AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN THAT CERTAIN SUBORDINATION AND INTERCREDITOR AGREEMENT (THE "SUBORDINATION AGREEMENT") DATED AS OF OCTOBER 7, 2003 AMONG NEOPHARM, INC., A DELAWARE CORPORATION, AKORN, INC., A LOUISIANA CORPORATION ("AKORN"), AND AKORN (NEW JERSEY), INC., AN ILLINOIS CORPORATION ("AKORN NJ"; TOGETHER WITH AKORN, EACH A "COMPANY" AND COLLECTIVELY THE "COMPANIES") AND LASALLE BANK NATIONAL ASSOCIATION (TOGETHER WITH ITS SUCCESSORS AND ASSIGNS, THE "SENIOR AGENT"), TO THE INDEBTEDNESS (INCLUDING INTEREST) OWED BY THE COMPANIES PURSUANT TO THAT CERTAIN CREDIT AGREEMENT DATED AS OF OCTOBER 7, 2003 AMONG THE COMPANIES, THE SENIOR AGENT AND THE LENDERS FROM TIME TO TIME PARTY THERETO, AND THE OTHER LOAN DOCUMENTS (AS DEFINED IN THE CREDIT AGREEMENT) AS SUCH CREDIT AGREEMENT AND OTHER LOAN DOCUMENTS MAY BE AMENDED, RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME AS CONTEMPLATED BY THE SUBORDINATION AGREEMENT (THE "LASALLE CREDIT AGREEMENT"); AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE SUBORDINATION AGREEMENT.

AMENDED AND RESTATED  
PROMISSORY NOTE

\$3,250,000.00

October 7, 2003  
Buffalo Grove, Illinois

FOR VALUE RECEIVED, AKORN, INC., a Louisiana corporation ("Borrower"), promises to pay to the order of NEOPHARM, INC., a Delaware corporation ("NeoPharm," together with any person or entity to whom all or any portion of this Note may be transferred being hereinafter referred to as "Lender"), at its principal offices located at 150 Field Drive, Suite 195, Lake Forest, Illinois 60045, or at such other place as Lender may direct, the principal sum of THREE MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS

(\$3,250,000.00), and to pay interest thereon in accordance with the terms hereof, on December 20, 2006 (the "Maturity Date").

This Amended and Restated Promissory Note (this "Note") amends and restates a certain Promissory Note dated December 20, 2001 made by Borrower in favor of Lender (the "Original Note") executed in connection with (a) that certain Processing Agreement dated as of December 20, 2001, as amended by an amendment dated of even date herewith (the "Processing Agreement"), between Lender and Borrower; and (b) that certain Subordination and Intercreditor Agreement dated as of December 20, 2001, as amended by an amendment dated of even date herewith (the "Subordination Agreement"), between Borrower and John N. Kapoor, as Trustee under The John N. Kapoor Trust, dated September 20, 1989, (the trustee and the trust, together, "Kapoor"), to which reference is hereby made. This Note is an amendment and restatement of the indebtedness evidenced by the Original Note, and nothing contained herein shall be construed to deem paid or forgiven the unpaid principal amount of, or unpaid accrued interest on, such indebtedness outstanding at the time of its replacement by this Note.

ARTICLE 1  
INTEREST

1.1 Calculation of Interest Rate. Beginning on the first day after the date hereof, Interest shall accrue on the unpaid principal amount from time to time outstanding hereunder at a rate per year equal to the "Prime Rate" plus one hundred seventy five basis points (175 bps). "Prime Rate" means the rate of interest announced from time to time by LaSalle Bank National Association ("LaSalle") as its prime rate. Changes in the rate of interest hereunder resulting from a change in the Prime Rate shall take effect on the date set forth in each announcement of a change in the Prime Rate. Interest shall be computed for the actual number of days elapsed on the basis of a year consisting of 365 days, including the date the loan is made and excluding the date the loan

or any portion thereof is paid or prepaid.

As of the date hereof, there is outstanding under the Original Note the sum of \$3,353,125.49 in principal and accrued but unpaid interest, all of which shall be deemed outstanding under this Note as of the date hereof.

1.2 Default Rate. After an Event of Default, interest shall accrue and be payable at a rate equal to (a) the interest rate calculated in accordance with Section 1.1, plus (b) three percent (3%) (the "Default Rate").

## ARTICLE 2 PAYMENTS

2.1 Required Repayment. Commencing on the last day of the calendar quarter during which all indebtedness owed by Borrower under the LaSalle Credit Agreement has been paid in full or otherwise discharged, and on the last day of each calendar quarter thereafter, Borrower will make quarterly payments of One Hundred Fifty Thousand and 00/100 Dollars (\$150,000), to be applied first, to accrued but unpaid interest, and second, to outstanding principal. Borrower shall pay any remaining amounts of outstanding principal and accrued but unpaid interest

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hereunder on the Maturity Date. Borrower may prepay all outstanding principal and accrued but unpaid interest at any time without penalty or premium.

2.2 Manner of Payments. All payments made by Borrower hereunder shall be made to Lender at its principal offices located at 150 Field Drive, Suite 195, Lake Forest, Illinois 60045, Attn: Chief Financial Officer or at such other places as Lender may designate. All payments hereunder shall be made in immediately available funds, and shall be applied first to accrued interest and then to principal; however, if an Event of Default occurs, Lender may, in its sole discretion, and in such order as it may choose, apply any payment to interest, principal and/or lawful charges and expenses then accrued. All payments shall be made without deduction for or on account of any present or future taxes, duties or other charges levied or imposed on this Note or the proceeds thereof by any government or political subdivision thereof, except as required by law.

## ARTICLE 3 OPERATIONS/LYOPHILIZATION RAMP-UP

3.1 Use of Proceeds. Borrower agrees that the proceeds from the loan evidenced by this Note shall be used solely (a) to achieve removal of all warning letter sanctions pursuant to Form 483 or current Good Manufacturing Practice regulations issued or imposed by the Food and Drug Administration ("FDA") with regard to Borrower's ability to handle and manufacture sterile pharmaceuticals and provide lyophilization services; (b) to obtain FDA validation for Borrower's operation of its facility located at 1222 West Grand Avenue, Decatur, Illinois (the "Facility") to offer and provide lyophilization services for the handling and manufacturing of sterile pharmaceuticals; (c) to obtain any other required license, consent, permit or approval from the FDA or any other governmental authority in the United States or its political subdivisions as shall be required to establish operations at the Facility to handle and manufacture sterile pharmaceuticals and provide lyophilization services; (d) to establish operations at the Facility to provide lyophilization services and to handle and manufacture sterile pharmaceuticals; and (e) to make any capital expenditure necessary to provide lyophilization services (the items set forth in subsections (a), (b), (c), (d), and (e) collectively, the "Lyophilization Ramp-Up").

3.2 Additional Costs. Borrower shall be responsible for all costs whatsoever related to the Lyophilization Ramp-Up in excess of the proceeds hereunder and shall not require, request or demand additional amounts from Lender to fund the Lyophilization Ramp-Up other than the amounts loaned by Lender to Borrower or evidenced by this Note.

3.3 October 1, 2004. By October 1, 2004, Borrower shall (a) complete the Lyophilization Ramp-Up; (b) maintain the continued removal of all warning letter sanctions pursuant to Form 483 related to the Facility; and (c) be prepared to immediately begin development of the procedures for manufacture of Lender's products.

3.4 Change in Control. If Borrower experiences, after the date hereof, (a) a change in control of greater than fifty percent (50%) of Borrower's voting securities or (b) a change in control through a merger or the sale of all or substantially all of Borrower's assets, then Lender

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may declare all amounts of principal and interest under this Note immediately due and payable and/or terminate the Processing Agreement.

#### ARTICLE 4 REPRESENTATIONS

4.1 Organization and Qualification. Borrower is duly organized, validly existing and in good standing under the laws of the State of Louisiana, its state of incorporation. Borrower is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction in which the failure to receive or retain such qualification would have a material adverse effect on the business, operations or financial condition of Borrower.

4.2 Corporate Authority and Authorization. Borrower has all requisite corporate, power, authority and legal right to execute and deliver and perform its obligations under this Note and all of Borrower's obligations described herein have been duly and validly authorized by all necessary corporate proceedings on the part of Borrower.

4.3 Execution and Binding Effect. This Note has been or shall be duly and validly executed and delivered by Borrower and this Note when executed and delivered shall constitute the legal, valid and binding obligations of Borrower enforceable in accordance with the terms hereof and thereof, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other laws affecting creditors' rights generally.

4.4 Absence of Conflicts. The execution and delivery of this Note, consummation of the transactions herein or Borrower's performance of or compliance with the terms and conditions hereof or in the Processing Agreement shall not (a) materially violate any applicable law or regulation; (b) conflict with or result in a material breach of or a default under the certificate of incorporation or bylaws of Borrower, or any agreement or instrument to which Borrower is a party or by which Borrower or its properties is bound; or (c) result in the creation or imposition of any lien upon any property (now owned or hereafter acquired) of Borrower except as otherwise contemplated by this Note.

4.5 No Event of Default; Compliance with Instruments Corporate Documents and Material Agreements. As of the date hereof Borrower is not in violation of any term of its certificate of incorporation and/or bylaws and Borrower is not in violation of any term of its material agreements or instruments including, without limitation, (a) LaSalle Credit Agreement; (b) two Mortgage Notes (together, the "Primary Mortgage"), each dated April 27, 1997, by and between Borrower and Standard Mortgage Investors ("Standard Investors"); (c) that certain Master Equipment Lease Agreement No. 08197, dated December 9, 1999, as amended December 26, 2000 (the "Asset Lease"), by and between Borrower and National City Leasing Corporation ("National City"); (d) that certain Convertible Bridge Loan and Warrant Agreement, dated July 12, 2001, by and between Borrower and The John N. Kapoor Trust, dated September 20, 1989 (the "Kapoor Trust") and that certain Promissory Note of Borrower in favor of The Kapoor Trust in the principal amount of \$2,117,139.03 dated as of October 7, 2003 (collectively, the "Kapoor Loans"), or (e) any other material agreement or instrument to which Borrower is a party or by which it or its properties is bound.

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4.6 Litigation. There is no pending action, suit or threatened proceeding by or before any governmental authority against or affecting Borrower which if adversely decided would have a material adverse effect on its financial condition or on its ability to comply with its obligations herein, except those disclosed on Exhibit A attached hereto.

4.7 Rights to Property. Except for the security interests (a)

granted by Borrower to the Senior Agent under the terms of the LaSalle Credit Agreement; (b) granted to Standard Investors under the terms of the Primary Mortgage; (c) retained by National City under the terms of the Asset Lease; and (d) otherwise disclosed on Exhibit A hereto (collectively, "Permitted Liens"), Borrower has good and marketable title to all personal and real property purported to be owned by it.

4.8 Taxes. All tax returns required to be filed by Borrower have been properly prepared, executed and filed, and all taxes, assessments, fees and other governmental charges levied upon Borrower or upon any of its properties, incomes, sales or franchises which are shown to be due and payable thereon have been paid, other than taxes or assessments the validity or amount of which Borrower is contesting in good faith. The reserves and provisions for taxes on the books of Borrower are adequate for all open years and for its current fiscal period.

4.9 Financial Accounting Practices. Borrower and each of its subsidiaries have made and kept books, records and accounts which, in reasonable detail, accurately and fairly reflect their respective dealings or transactions of or in relation to the plants, properties, business and affairs of the Borrower and of each subsidiary, and Borrower shall keep, and cause each of its subsidiaries to keep, proper books of account, in which full and correct entries shall be made of all dealings or transactions of or in relation to the plants, properties, business and affairs of the Borrower and of each subsidiary in accordance with generally accepted accounting principles applied on a consistent basis. The Borrower will at any and all times, upon the written request of the Lender and at the Lender's expense, permit the Lender by its representatives to inspect the plants and properties, books of account, records, reports and other papers of the Borrower and of each subsidiary, and to take copies and extracts therefrom, and will afford and procure a reasonable opportunity to make any such inspection.

4.10 Accurate and Complete Disclosure. To the best of Borrower's knowledge, no representation made by Borrower under this Note and no statement made by Borrower in any financial statement, report filed with the Securities and Exchange Commission, certificate, exhibit or document furnished by Borrower to Lender pursuant to or in connection with this Note is false or misleading as of the date made in any material respect (including by omission of material information necessary to make such representation, warranty or statement not misleading). Lender has had adequate access to Borrower's management and opportunity to conduct its own due diligence examination of the plants and properties, books of account, records, reports and other papers of the Borrower and each of its subsidiaries.

4.11 Other Indebtedness. With the exception of (a) the LaSalle Credit Agreement; (b) the Primary Mortgage; (c) the Asset Lease; (d) the Kapoor Loans, and (e) the Promissory Note of Borrower, dated as of October 7, 2003, in favor of Arjun Waney in the principal amount of \$600,000, Borrower has no Indebtedness in excess of \$100,000.

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4.12 Capital Stock. All of the outstanding capital stock of Borrower has been duly authorized and validly issued, and is non-assessable.

4.13 Environmental Warranties. To the best of Borrower's knowledge, Borrower and each of its subsidiaries is in substantial compliance with all environmental laws, regulations, rules, ordinances, permits, orders, and other requirements applicable to it, the operations of each or the real or personal property owned, leased or operated by each, including without limitation, all such laws governing employment, the generation, use, storage, disposal or transportation of toxic or hazardous substances or wastes. Borrower has not received notice of, and is not aware of, any violations or alleged violations, or any liability or asserted liability, under any such environmental laws, with respect to Borrower, its subsidiaries, or their respective businesses or properties.

ARTICLE 5  
COVENANTS

Except as otherwise permitted under the LaSalle Credit Agreement or consented to in writing by the Senior Agent, Borrower covenants and agrees that, without the prior written consent of Lender, from and after the date hereof

until all amounts of principal and interest hereunder are repaid and discharged:

5.1 Indebtedness. Borrower shall not create, incur, assume or permit to exist any Indebtedness, after the date hereof except (a) deferred taxes; (b) unfunded pension fund and other employee benefit plan obligations and liabilities to the extent they are permitted to remain unfunded under applicable law; (c) existing Indebtedness, which includes (i) amounts outstanding under the LaSalle Credit Agreement and any additional advances or borrowings under the LaSalle Credit Agreement in accordance with the terms thereof, (ii) the Primary Mortgage, (iii) the Asset Lease, (iv) the Kapoor Loans, and (v) the loans made by Lender evidenced by this Note, or the refinancing of any of the documents or facilities set forth in subparagraphs (i) through (v), the refinanced terms of which shall in any event be on terms no less favorable to Borrower or Lender than the terms of the Indebtedness being refinanced; (d) any financing secured by any real estate owned by Borrower; and (e) the unsecured financing by a seller of product lines to Borrower.

"Indebtedness" shall mean (a) any obligation for the repayment of borrowed money or, with respect to the purchase price of property, any payment which is deferred six (6) months or more after the date of acquisition, but excluding obligations to trade creditors incurred in the ordinary course of business that are not overdue by more than six (6) months unless being contested in good faith; (b) reimbursement and all other obligations with respect to letters of credit, bankers' acceptances and surety bonds, whether or not matured; (c) all obligations evidenced by notes, bonds, debentures or similar instruments; (d) any obligation for the payment of money created or arising under any conditional sale or other title retention agreement; (e) all capital leases; and (f) any agreement to guarantee the indebtedness of a subsidiary of Borrower or any other person or business entity.

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5.2 Business. Borrower shall not make any changes in its business objectives, purposes or operations which could in any way adversely affect the repayment of this Note or Borrower's ability to comply with its obligations contained in the Processing Agreement.

5.3 Liens. Borrower shall not create, incur, assume or permit to exist any Lien on or with respect to any of its properties or assets whether now owned or hereafter acquired, except (a) Permitted Liens, (b) presently existing or hereafter created Liens in favor of Lender; (c) Liens created after the date hereof by conditional sale or other title retention agreements (including, without limitation, capital leases) or in connection with purchase money Indebtedness with respect to properties acquired by Borrower in the ordinary course of business, involving the incurrence of an aggregate amount of purchase money Indebtedness and capital lease obligations of not more than \$1,000,000 outstanding at any one time for all such Liens (provided that such Liens attach only to the assets subject to such purchase money Indebtedness and such Indebtedness is incurred within twenty (20) days following such purchase and does not exceed 100% of the purchase price of the subject assets); (d) Liens in connection with any financing secured by any real estate owned by Borrower; and (e) Liens existing on the date hereof and described in Exhibit A hereto.

In addition, Borrower shall not become a party to any agreement, note, indenture or instrument, or take any other action, which would prohibit the creation of a Lien on any of its properties or other assets in favor of Lender, as collateral for payment and satisfaction of the outstanding principal and accrued interest under this Note, except the LaSalle Credit Agreement, operating leases, capital leases or intellectual property licenses which prohibit liens upon the assets that are subject thereto.

"Lien" shall mean any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the Uniform Commercial Code or comparable law of any jurisdiction).

5.4 Cancellation of Indebtedness. Borrower shall not cancel any claim or debt owing to it, except for reasonable consideration negotiated on an arm's-length basis and in the ordinary course of its business consistent with



past practices.

ARTICLE 6  
EVENTS OF DEFAULT: RIGHTS AND REMEDIES

6.1 Events of Default. The occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an "Event of Default" hereunder: (a) Borrower shall fail to make any payment of principal of, or interest on, or any other amount owing in respect of this Note when due and payable; (b) Borrower shall fail to pay any costs or expenses payable or reimbursable by Borrower under this Note, and such failure shall have remained unremedied for a period of thirty (30) days or more; (c) Borrower shall fail or neglect to perform, keep or observe any of the provisions of this Note (and not constituting an Event of Default

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under any of the other subsections of this Section 6.1) and such failure shall have remained unremedied for a period of thirty (30) days or more; (d) Borrower shall fail to perform, keep or observe any provision of the Processing Agreement after the grace period (if any) set forth therein or the Processing Agreement shall not be effective on or before October 1, 2004; (e) the Indebtedness under the LaSalle Credit Agreement shall become or be declared due prior to its stated maturity or its regularly scheduled dates of payment; (f) a default under any agreement, document or instrument, excluding those specified in subsection 6.1(e), to which Borrower is a party and such default is not cured or waived within any applicable grace period and such default or breach (i) involves the failure to make any payment when due in respect of any Indebtedness of Borrower or any subsidiary of Borrower in excess of \$50,000 in the aggregate, or (ii) causes such Indebtedness or a portion thereof in excess of \$100,000 in the aggregate to become due prior to its stated maturity or prior to its regularly scheduled dates of payment, or (iii) entitles any holder of such Indebtedness to cause such Indebtedness or a portion thereof in excess of \$100,000 in the aggregate to become due prior to its stated maturity or prior to its regularly scheduled dates of payment, regardless of whether such right is exercised or waived by such holder or trustee; (g) Kapoor breaches or repudiates or attempts to breach or repudiate, the Subordination Agreement or the Subordination Agreement is terminated by operation of its terms or operation of law; (h) any representation or warranty herein or in any written statement, report filed with the Securities and Exchange Commission, financial statement or certificate made or delivered to Lender by Borrower shall be untrue or incorrect in any material respect, as of the date when made or deemed made; (i) assets of Borrower or any subsidiary thereof with a fair market value of \$100,000 or more shall be attached, seized, levied upon or subjected to a writ or distress warrant, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors of Borrower or any subsidiary thereof and such condition shall continue for thirty (30) days or more; (j) a case or proceeding shall have been commenced against Borrower or any subsidiary thereof in a court having competent jurisdiction seeking a decree or order in respect of Borrower or any subsidiary thereof (i) under Title 11 of the United States Code, as now constituted or hereafter amended or any other applicable federal, state or foreign bankruptcy or other similar law, (ii) appointing a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) for Borrower or any subsidiary thereof or of any substantial part of the assets thereof, or (iii) ordering the winding-up or liquidation of the affairs of Borrower or any subsidiary thereof and such case or proceeding shall remain undismissed or unstayed for forty-five (45) days or more or such court shall enter a decree or order granting the relief sought in such case or proceeding; (k) Borrower or any subsidiary thereof shall (i) file a petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other applicable federal, State or foreign bankruptcy or other similar law, (ii) consent to the institution of proceedings thereunder or to the filing of any such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee or sequestrator (or similar official) of Borrower or any subsidiary thereof or of any substantial part of its respective assets, (iii) make an assignment for the benefit of creditors, or (iv) take any corporate action in furtherance of any such action; or (l) a final judgment or judgments for the payment of money in excess of \$250,000 in the aggregate shall be rendered against Borrower or any subsidiary thereof and the same shall not (i) be fully covered by insurance, or (ii) within thirty (30) days after the entry thereof, have been discharged or execution thereof stayed pending appeal, or shall not have been paid or otherwise discharged prior to the expiration of any such stay.

6.2 Remedies. If any Event of Default shall have occurred and be continuing subject to the terms of the Subordination Agreement, (a) all of the outstanding principal and accrued and unpaid interest under this Note shall be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are expressly waived by Borrower; (b) the rate of interest applicable to this Note shall be increased to the Default Rate; and (c) Borrower may exercise any rights and remedies provided to Lender under this Note and/or at law or equity.

6.3 Waivers by Borrower. Except as otherwise provided for in this Note or by applicable law, Borrower waives presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by Lender on which Borrower may in any way be liable, and hereby ratifies and confirms whatever Lender may do in this regard. Borrower acknowledges that it has been advised by counsel of its choice with respect to this Note and the transactions evidenced by this Note.

ARTICLE 7  
SUCCESSORS AND ASSIGNS

This Note shall be binding on and shall inure to the benefit of Borrower and Lender and their respective successors and assigns, except as otherwise provided herein. Borrower may not assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder without the prior express written consent of Lender. Any such purported assignment, transfer, hypothecation or other conveyance by Borrower without the prior express written consent of Lender shall be void. The terms and provisions of this Note are for the purpose of defining the relative rights and obligations of Borrower and Lender with respect to the transactions contemplated hereby and there shall be no third party beneficiaries of any of the terms and provisions of this Note.

ARTICLE 8  
SUBORDINATION

Anything in this Note to the contrary notwithstanding, the Indebtedness evidenced by this Note, both principal and interest, and the right to seek enforcement of any of the rights granted to Lender herein, shall be subordinate and junior to all obligations of Borrower incurred under the LaSalle Credit Agreement, between Borrower and the Senior Agent.

ARTICLE 9  
NOTICES

All notices, requests, demands and payments of principal and interest given to or made under this Note shall, except as otherwise specified in this Note, be in writing and shall be effective upon the earlier of (a) receipt or (b) the fifth (5th) day following the date such notice was mailed properly addressed, first class, registered or certified mail, return receipt requested, postage prepaid, to the other party at the following addresses (which may be changed at any time by notice under this Article 9):

If to NeoPharm, Inc.

150 Field Drive, Suite 195  
Lake Forest, Illinois 60045  
Facsimile No.: (847) 295-8854  
Attn: James Hussey

With a copy to:

McGuireWoods Ross & Hardies  
150 North Michigan Avenue  
Chicago, Illinois 60601-7567  
Facsimile No.: (312) 750-8600

Attn: Scott Becker

If to Akorn, Inc.

Akorn, Inc.  
2500 Millbrook Drive  
Buffalo Grove, IL 60089-4694  
Facsimile No. (847) 279-6123  
Attn: Arthur S. Przybyl

With a copy to:

Tressler, Soderstrom, Maloney  
& Priess  
2100 Manchester Road, Suite 950  
Wheaton, Illinois  
Facsimile No.: (630) 668-3003  
Attn: William A. Kindorf, III

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ARTICLE 10  
GOVERNING LAW & WAIVER OF JURY TRIAL

This Note and any document or instrument executed in connection herewith shall be governed by and construed in accordance with the internal law of the State of Illinois, and shall be deemed to have been executed in the State of Illinois. Unless the context requires otherwise, wherever used herein the singular shall include the plural and vice versa, and the use of one gender shall also denote the other. Captions herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof; references herein to Articles or provisions without reference to the document in which they are contained are references to this Note. This Note shall bind Borrower, its trustees (including without limitation successor and replacement trustees), successors and assigns, and shall inure to the benefit of Lender, its successors and assigns, except that Borrower may not transfer or assign any of its rights or interest hereunder without the prior written consent of Lender.

BORROWER HEREBY IRREVOCABLY AGREES THAT, SUBJECT TO LENDER'S SOLE AND ABSOLUTE ELECTION, ALL SUITS, ACTIONS OR OTHER PROCEEDINGS WITH RESPECT TO, ARISING OUT OF OR IN CONNECTION WITH THIS NOTE OR ANY DOCUMENT OR INSTRUMENT EXECUTED IN CONNECTION HEREWITH SHALL BE SUBJECT TO LITIGATION IN COURTS HAVING SITUS WITHIN OR JURISDICTION OVER COOK COUNTY, ILLINOIS. BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED IN OR HAVING JURISDICTION OVER SUCH COUNTY, AND HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO REQUEST OR DEMAND TRIAL BY JURY, TO TRANSFER OR CHANGE THE VENUE OF ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT BY LENDER IN ACCORDANCE WITH THIS PARAGRAPH, OR TO CLAIM THAT ANY SUCH PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

ARTICLE 11  
MISCELLANEOUS

11.1 Construction. Wherever possible, each provision of this Note shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Note is prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Note.

11.2 Amendments. This Note may not be and shall not be deemed or construed to have been modified, amended, rescinded, canceled, or waived in whole or in part, except by written instruments signed by Borrower and Lender.

11.3 No Waiver. Lender's failure at any time or times, to require strict performance by Borrower of any provision of this Note or Promissory Agreement shall not waive, affect or diminish any right of Lender thereafter to demand strict compliance and performance therewith. Any suspension or waiver of an Event of Default under this Note or Promissory Agreement shall

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not suspend, waive or affect any other Event of Default under this Note or

Promissory Agreement whether the same is prior or subsequent thereto and whether of the same or of a different type. None of the undertakings, agreements, warranties, covenants and representations of Borrower contained in this Note or Promissory Agreement and no Event of Default by Borrower under this Note or Promissory Agreement shall be deemed to have been suspended or waived by Lender unless such waiver or suspension is by an instrument in writing signed by an officer of or other authorized employee of Lender and directed to Borrower specifying such suspension or waiver.

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IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed as of the day and year first above written.

AKORN, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

Accepted:

NEOPHARM, INC.

By: \_\_\_\_\_  
Its: President and Chief Executive Officer

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#### EXHIBIT A

##### 1. LITIGATION.

- On March 27, 2002, Akorn received a letter informing it that the staff of the SEC regional office in Denver, Colorado, would recommend to the SEC that it bring an enforcement action against Akorn and seek an order requiring Akorn to be enjoined from engaging in certain conduct. The staff alleged that Akorn misstated its income for fiscal years 2000 and 2001 by allegedly failing to reserve for doubtful accounts receivable and overstating its accounts receivable balance as of December 31, 2000. The staff alleged that internal control and books and records deficiencies prevented Akorn from accurately recording, reconciling and aging its accounts receivable. Akorn also learned that certain of its former officers, as well as a then current employee had received similar notifications. Subsequent to the issuance of Akorn's consolidated financial statements for the year ended December 31, 2001, management of Akorn determined it needed to restate Akorn's financial statements for 2000 and 2001 to record a \$7.5 million increase to the allowance for doubtful accounts as of December 31, 2000, which it had originally recorded as of March 31, 2001.

On February 27, 2003, Akorn reached an agreement in principle with the staff of the SEC's regional office in Denver, Colorado, which was revised on July 11, 2003 and finalized on September 25, 2003, which resolves the issues arising from the staff's investigation and proposed enforcement action as discussed above. Akorn has consented to the entry of an administrative cease and desist order as proposed by the staff, without admitting or denying the findings set forth therein. The consent order finds that Akorn failed to promptly and completely record and reconcile cash and credit remittances, including from its top five customers, to invoices posted in its accounts receivable sub-ledger. According to the findings in the consent order, Akorn's problems resulted from, among other things, internal control and books and records deficiencies that prevented Akorn from accurately recording, reconciling and aging its receivables. The consent order finds that Akorn's 2000 Form 10-K and first quarter 2001 Form 10-Q misstated its account receivable balance or, alternatively, failed to disclose the impairment of its accounts receivable and that its first quarter 2001 Form 10-Q inaccurately attributed the increased accounts receivable

reserve to a change in estimate based on recent collection efforts, in violation of Section 13(a) of the Exchange Act and rules 12b-20, 13a-1 and 13a-13 thereunder. The consent order also finds that Akorn failed to keep accurate books and records and failed to devise and maintain a system of adequate internal accounting controls with respect to its accounts receivable in violation of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. The consent order does not impose a monetary penalty against Akorn or require any additional restatement of Akorn's financial statements. The consent order contains an additional commitment by Akorn to do the following: (A) appoint a special committee comprised entirely of outside directors, (B) within 30 days after entry of the order, have the special committee retain a qualified independent consultant ("consultant") acceptable to the staff to perform a test of Akorn's material internal controls, practices, and policies related to accounts receivable, and (C) within 180 days, have the consultant present his or her findings to the commission for review to provide assurance that Akorn is keeping accurate books and records and has devised and

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maintained a system of adequate internal accounting controls with respect to Akorn's accounts receivables.

- In October 2000, the Food and Drug Administration (the "FDA") issued a warning letter to Akorn following the FDA's routine Current Good Manufacturing Practices ("cGMP") inspection of Akorn's Decatur manufacturing facilities. This letter addressed several deviations from regulatory requirements including cleaning validations and general documentation and requested corrective actions be undertaken by Akorn. Akorn initiated corrective actions and responded to the warning letter. Subsequently, the FDA conducted another inspection in late 2001 and identified additional deviations from regulatory requirements including process controls and cleaning validations. This led to the FDA leaving the warning letter in place and issuing a Form 483 to document its findings. While no further correspondence was received from the FDA, Akorn responded to the inspectional findings. This response described Akorn's plan for addressing the issues raised by the FDA and included improved cleaning validation, enhanced process controls and approximately \$2.0 million of capital improvements. In August 2002, the FDA conducted an inspection of the Decatur facility and identified cGMP deviations. Akorn responded to these observations in September 2002. In response to Akorn's actions, the FDA conducted another inspection of the Decatur facility during the period from December 10, 2002 to February 6, 2003. This inspection identified deviations from regulatory requirements including the manner in which Akorn processes and investigates manufacturing discrepancies and failures, customer complaints and the thoroughness of equipment cleaning validations. Deviations identified during this inspection had been raised in previous FDA inspections. Akorn has responded to these latest findings in writing and in a meeting with the FDA in March 2003. Akorn set forth its plan for implementing comprehensive corrective actions, has provided a progress report to the FDA on April 15, May 15, 2003 and June 15, 2003.

As a result of the latest inspection and Akorn's response, the FDA may take any of the following actions: (i) permit Akorn to continue its corrective actions and conduct another inspection (which likely would not occur before the fourth quarter of 2003) to assess the success of these efforts; (ii) seek to enjoin Akorn from further violations, which may include temporary suspension of some or all operations and potential monetary penalties; or (iii) take other enforcement action which may include seizure of Company products. At this time, it is not possible to predict the FDA's course of action.

FDA approval is required before any drug can be manufactured and marketed. New drugs require the filing of a New Drug Application ("NDA"), including clinical studies demonstrating the safety and efficacy of the drug. Generic drugs, which are equivalents of existing, off-patent brand name drugs, require the filing of an Abbreviated New Drug Application ("ANDA"). Akorn believes that unless and until the FDA chooses option (i) or, in the case of option (ii), unless and until the issues identified by the FDA have been successfully corrected and the

corrections have been verified through reinspection, it is doubtful that the FDA will approve any NDAs or ANDAs that may be submitted by Akorn. This has adversely impacted, and is likely to continue to adversely impact Akorn's ability to grow sales. However, Akorn believes that unless and until the FDA

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chooses option (ii) or (iii), Akorn will be able to continue manufacturing and distributing its current product lines.

If the FDA chooses option (ii) or (iii), such action could significantly impair Akorn's ability to continue to manufacture and distribute its current product line and generate cash from its operations, would result in a covenant violation under Akorn's senior debt and would cause Akorn's senior lenders to refuse further extensions of Akorn's senior debt, any or all of which would have a material adverse effect on Akorn's liquidity. Any monetary penalty assessed by the FDA also could have a material adverse effect on Akorn's liquidity.

- On March 6, 2002, Akorn received a letter from the United States Attorney's Office, Central District of Illinois, Springfield, Illinois, advising Akorn that the Drug Enforcement Agency (the "DEA") had referred a matter to that office for a possible civil legal action for alleged violations of the Comprehensive Drug Abuse Prevention Control Act of 1970, 21 U.S.C. sec. 801, et. seq. and regulations promulgated under the Act. The alleged violations relate to record keeping and controls surrounding the storage and distribution of controlled substances. On November 6, 2002, Akorn entered into a Civil Consent Decree with the DEA. Under terms of the Consent Decree, Akorn, without admitting any of the allegations in the complaint from the DEA, has agreed to pay a fine of \$100,000, upgrade its security system and to remain in substantial compliance with the Comprehensive Drug Abuse Prevention Control Act of 1970. If Akorn does not remain in substantial compliance during the two-year period following the entry of the civil consent decree, Akorn, in addition to other possible sanctions, may be held in contempt of court and ordered to pay an additional \$300,000 fine.
- On December 19, 2002 and January 22, 2003, Akorn received demand letters regarding claimed wrongful deaths allegedly associated with the use of the drug Inapsine, which Akorn produced. The total amount of the claims asserted is \$3.8 million. In July 2003, Akorn agreed to a settlement with respect to one of the claims alleged by these demand letters. Akorn does not believe that this settlement or the outcome of the second alleged claim will have a material impact on Akorn's financial position. Potential damages in wrongful death suits are covered by Akorn's product liability policy.
- On August 9, 2003, Akorn received a Request for Arbitration from Novadaq Technologies, Inc. regarding a dispute for a right of reference to Akorn's NDA for IC Green in regards to Novadaq's pursuit of a diagnosis and treatment of Age Related Macular Degeneration. Akorn and Novadaq entered into an Agreed Order on September 23, 2003, pursuant to which Akorn has granted Novadaq a temporary right of reference pending the conclusion of the arbitration.
- Complaint filed in the Court of the 7th Judicial Court of Illinois dated September 2, 2003 from the Capitol Group, Inc. regarding unpaid bills for services totaling \$4,559.16.
- Complaint filed in the Circuit Court of Cook County, Illinois dated June 25, 2003 from the VWR International regarding unpaid bills for services totaling \$223,101.71.

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- Complaint filed in Allegheny County, Pennsylvania from Fisher Scientific for \$82,148.84 plus interest and costs.

2. LIENS.

TRANSACTION	SECURED PARTY	DEBTOR	JURISDICTION
Equipment Lease No. OL-8248 with Amplicon, Inc.; secured by UCC financing statement covering equipment	The CIT Group/ Equipment Financing, Inc. 1620 W. Fountainhead Pkwy. Tempe, AZ 85282	Akorn	LA and St. Tammany Parrish
Mortgage Loan Nos. 98021903 and 98021904 dated 4/27/97; secured by mortgages on Decatur real properties; principal balance at 6/30/01 \$2,318,214.90, final payment due June 2008	Standard Mortgage Investors	Akorn	Macon Co., IL
Equipment Lease Nos. VJ3317 and W10811 with Lincoln Service & Equipment Co.; secured by UCC financing statement covering equipment	Associates Leasing, Inc. 8001 Ridgepoint Drive Irving, TX 75063	Akorn	NJ
Equipment Lease No. 5387; secured by UCC financing statement covering equipment	Deerhart Financial Services Co. 2250 E. Devon Ave., Ste. 251 Des Plaines, IL 60018	Akorn	IL
Master Equipment Lease Agreement No. 08197-0012, dated December 9, 1999, as amended December 26, 2000; acquisition cost \$3,811,028.93 with monthly payments of \$52,577.71 through 12/26/07; secured by UCC financing statement covering equipment	National City Leasing Corp. P.O. Box 36040 Louisville, KY 40233	Akorn	IL
LaSalle Credit Agreement, dated as of October 7, 2003, among Akorn, Inc., Akorn (New Jersey), Inc., Various Financial Institutions Party Hereto, and LaSalle Bank National Association.	LaSalle Bank 135 South LaSalle Street Chicago, Illinois 60603	Akorn, Inc. Akorn (New Jersey), Inc.	Akorn, Inc. Louisiana Macon County, IL Cook County, IL
Credit Facility between Akorn, Inc. and Akorn (New Jersey), Inc. and Northern Trust.(1)	Northern Trust	Akorn, Inc. Akorn (New Jersey), Inc.	Akorn, Inc. Louisiana Macon County, IL Cook County, IL

(1) Northern Trust has a lien on substantially all of the assets of Akorn that will be released by Northern Trust upon consummation of the transactions contemplated by the LaSalle Credit Agreement.

REAFFIRMATION OF  
SUBORDINATION AND INTERCREDITOR AGREEMENT

To: NeoPharm, Inc.  
150 Field Drive, Suite 195  
Lake Forest, Illinois 60045  
Attn: President and Chief Executive Officer

Re: Subordination and Intercreditor Agreement (as amended, restated, renewed or replaced from time to time, the "Kapoor Subordination Agreement") dated as of December 20, 2001, executed by John N. Kapoor, as Trustee under The John N. Kapoor Trust, dated September 20, 1989 (the "Junior Party") in favor of NeoPharm, Inc. (the "Lender") (capitalized terms used but not defined herein to have the meanings assigned to them in the Kapoor Subordination Agreement)

Dear Sir:

This letter is given to Lender to induce Lender to (a) waive certain defaults existing under that certain Promissory Note of Akorn, Inc. ("Borrower") dated December 20, 2001 in the principal amount of \$3,250,000 in favor of Lender (the "Original NeoPharm Note"), (b) accept in substitution for the Original NeoPharm Note an Amended and Restated Promissory Note of Borrower dated of even date hereof in the principal amount of \$3,250,000 in favor of Lender (the "Amended and Restated NeoPharm Note"), and (c) execute and deliver a certain Subordination and Intercreditor Agreement dated of even date herewith (the "LaSalle Subordination Agreement") in favor of LaSalle Bank National Association, as Administrative Agent for the Senior Lenders under a Credit Agreement dated of even date herewith (the "Credit Agreement") subordinating indebtedness of Borrower to Lender to the prior payment in full of all indebtedness of Borrower under the Credit Agreement.

Without limiting Lender's rights and remedies under or in connection with the Kapoor Subordination Agreement, the undersigned hereby confirms that:

- (a) All obligations of the undersigned to Lender under the Kapoor Subordination Agreement are hereby reaffirmed; provided that Borrower may make to the Junior Party and the Junior Party may accept: (i) reimbursement of all costs and expenses incurred by the Junior Party in connection with the negotiation, execution, delivery and preparation of the Kapoor Guaranty and Related Agreements to which it is a party and the consummation of the transactions contemplated thereby and (ii) reimbursement of the costs of issuance of the unconditional standby letter of credit delivered to the Administrative Agent by  
  
the Junior Party pursuant to the Kapoor Guaranty; provided, that reimbursements pursuant to clauses (i) and (ii) shall not exceed \$140,000 in the aggregate during the term of this Agreement. Terms used but not otherwise defined in the foregoing shall have the meanings ascribed to them in the Credit Agreement.
- (b) The execution and delivery of the Amended and Restated NeoPharm Note and/or the LaSalle Subordination Agreement shall in no way diminish, affect or modify the undersigned's obligations under the Kapoor Subordination Agreement;
- (c) The definition of "Junior Debt" set forth in the Kapoor Subordination Agreement shall include, without limitation, all principal, interest, late fees, default interest, future advances and all other sums due under that certain Promissory Note of the Borrower in favor of the undersigned dated as of October 7, 2003 in the principal amount of \$2,117,139.03.

The undersigned acknowledges and agrees that you will be relying upon this letter in waiving outstanding defaults under the Original NeoPharm Note and subordinating repayment of the Amended and Restated NeoPharm Note to the prior payment in full of indebtedness of Borrower under the Credit Agreement and otherwise.



Sincerely,

-----  
John N. Kapoor, as Trustee under  
THE JOHN N. KAPOOR TRUST, Dated  
September 20, 1989

Address:

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Fax No.:

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Acknowledged and agreed by:

AKORN, INC.

By:

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Name:

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Title:

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SUBORDINATION AND INTERCREDITOR AGREEMENT  
(LaSalle Bank National Association/Neopharm, Inc.)

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT dated as of October 7, 2003 (this "Agreement") is entered into among AKORN, INC., a Louisiana corporation ("Akorn"), AKORN (NEW JERSEY), INC., an Illinois corporation ("Akorn NJ"; together with Akorn, each a "Company" and collectively, the "Companies"), LASALLE BANK NATIONAL ASSOCIATION, as Senior Agent (as hereinafter defined) for Senior Lenders under the Credit Agreement (as hereinafter defined), and NEOPHARM, INC., a Delaware corporation (the "Subordinated Lender").

RECITALS

A. The Senior Agent, certain financial institutions (together with the successors and assigns thereof, "Senior Lenders") and the Companies have entered into a Credit Agreement, dated as of the date hereof (as from time to time amended, modified, extended, renewed, refinanced, or restated, the "Credit Agreement"), together with the other Loan Documents (as defined in the Credit Agreement), whereby the Senior Lenders have made and shall make available to each of the Companies certain loans and other financial accommodations therein set forth. All of the Companies' obligations under the Senior Loan Documents (as hereinafter defined) are secured by assignments of and security interests in substantially all of the now or hereafter acquired assets of the Companies and their Subsidiaries, all as more fully set forth in the Loan Documents.

B. Akorn has issued that certain Amended and Restated Promissory Note dated October 7, 2003 in the principal amount of \$3,250,000 (the "Subordinated Note", together with all guarantees and other documents or instruments executed in connection therewith (as from time to time modified, extended, renewed, refinanced or restated to the extent permitted by the terms of this Agreement, collectively the "Subordinated Documents")) in favor of the Subordinated Lender.

C. As a condition of the financing accommodations under the Loan Documents, the parties hereto are required to enter into this Agreement to establish the relative rights and priorities of the Senior Agent, the Senior Lenders and the Subordinated Lender under the Senior Loan Documents and the Subordinated Documents.

D. The Subordinated Lender will benefit from the financing accommodations made by the Senior Lenders under the Credit Agreement and the other Loan Documents. The Subordinated Lender and the Companies desire to enter into this Agreement in order to induce the Senior Lenders to enter into the Credit Agreement. The Subordinated Lender acknowledges that the Senior Lenders would not enter into the Senior Loan Documents but for the execution of this Agreement.

In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. Definitions. Except as otherwise provided herein, all capitalized terms used in this Agreement shall have the meanings ascribed to such terms in the Credit Agreement, provided that the following terms shall have the meanings set forth below:

"Bankruptcy Code" means Title 11 of the United States Code (11 U.S.C. Section 101 et. seq.) or any replacement or supplemental federal statute dealing with the bankruptcy of debtors.

"Company" and "Companies" shall have the meaning set forth in the recitals hereof.

"Company Property" means all assets, property and property rights, of any kind or nature, tangible or intangible, now or hereafter existing, in which either Company or any Obligor owns, asserts or maintains an interest.

"Credit Agreement" shall have the meaning set forth in the recitals hereof.

"Finally Paid" or "Final Payment," when used in connection with the Senior Indebtedness, means the full and indefeasible payment in cash of all of the Senior Indebtedness and the irrevocable termination of all Commitments of

all the Senior Lenders under the Senior Loan Documents.

"Liens" means any mortgage, deed of trust, pledge, lien, security interest, charge, set-off right or other encumbrance, whether now existing or hereafter created, acquired or arising.

"Obligor" means any guarantor or obligor of any Senior Indebtedness.

"Proceeding" means any voluntary or involuntary proceeding commenced by or against either Company or any Obligor under any provision of the Bankruptcy Code, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with its creditors, or proceedings seeking dissolution, receivership, reorganization, arrangement, or other similar relief.

"Senior Agent" means LaSalle Bank National Association, as Administrative Agent for Senior Lenders, or any other Person appointed by the holders of the Senior Indebtedness as administrative agent for purposes of the Senior Loan Documents and this Agreement, together with the successors and assigns of all of the foregoing.

"Senior Indebtedness" means all obligations, liabilities and indebtedness of every nature of either Company or any Obligor from time to time owed to the Senior Agent or any Senior Lender under the Senior Loan Documents, including the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all premium, fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable, whether before or after the filing of a Proceeding,

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including any Hedging Obligations and Bank Product Obligations at any time due and owing to any Senior Lender, together with (a) any amendments, modifications, renewals, restatements or extensions thereof and (b) any interest accruing thereon after the commencement of a Proceeding, without regard to whether or not such interest is allowed in any Proceeding. Senior Indebtedness shall be deemed to be outstanding until it is Finally Paid.

"Senior Loan Documents" means the Credit Agreement, the other Loan Documents and all other agreements, documents and instruments executed from time to time in connection therewith, in each case as from time to time renewed, extended, amended, restated or modified by the parties thereto and all agreements and instruments evidencing full or partial refundings of the indebtedness thereunder.

"Subordinated Indebtedness" means all obligations, liabilities and indebtedness of every nature of either Company or any Obligor from time to time owed to any Subordinated Lender under the Subordinated Documents, including the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all premium, fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable, whether before or after the filing of a Proceeding (including any amounts payable by either Company or any Obligor in connection with put, redemption, repurchase or repurchase rights under any warrants or any Capital Securities of either Company or any Obligor held by any Subordinated Lender), together with (a) any amendments, modifications, renewals, restatements or extensions thereof by the parties thereto and (b) any interest accruing thereon after the commencement of a Proceeding, without regard to whether or not such interest is allowed in any Proceeding.

"Subordinated Lender Remedies" means any action (a) to take from or for the account of either Company, any Obligor, any other guarantor of the Subordinated Indebtedness or any other Person, by set-off or in any other manner, the whole or any part of any moneys which may now or hereafter be owing by either Company (other than receipt of payments of Subordinated Indebtedness to the extent permitted by this Agreement), any Obligor, any such guarantor or any other Person with respect to the Subordinated Indebtedness, (b) to sue for payment of, or to initiate or participate with others in any suit, action or proceeding (including any Proceeding) against either Company, any Obligor, any such guarantor or any other Person to (i) enforce payment of or to collect the whole or any part of the Subordinated Indebtedness or (ii) commence judicial enforcement of any of the rights and remedies under the Subordinated Documents or applicable law with respect to the Subordinated Indebtedness, (c) to

accelerate the Subordinated Indebtedness, (d) to exercise any put, repurchase or similar option or to cause either Company, any Obligor, any such guarantor or any other Person to honor any redemption or mandatory prepayment obligation under any Subordinated Document or (e) to take any action under the provisions of any state or federal law, including the UCC, or under any contract or agreement, to enforce, foreclose upon, take possession of or sell any Company Property or any property or assets of any such guarantor or any other Person.

"Subordinated Lender" shall have the meaning set forth in the recitals hereof.

"Subordinated Note" shall have the meaning set forth in the recitals hereof.

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"UCC" means Article 9 of the Uniform Commercial Code, as in effect in any relevant jurisdiction.

2. Subordination of Subordinated Indebtedness to Senior Indebtedness. Each Company covenants and agrees, and the Subordinated Lender by its acceptance of the Subordinated Documents (whether upon original issue or upon transfer or assignment) likewise covenants and agrees, notwithstanding anything to the contrary contained in any of the Subordinated Documents, that the payment of any and all of the Subordinated Indebtedness shall be subordinate and subject in right and time of payment, to the extent and in the manner hereinafter set forth, to the Final Payment of all Senior Indebtedness. Each holder of Senior Indebtedness, whether now outstanding or hereafter created, incurred, assumed or guaranteed, shall be deemed to have acquired Senior Indebtedness in reliance upon the provisions contained in this Agreement.

### 3. Subordination of Liens.

(a) The Subordinated Lender hereby covenants and agrees that any Liens and rights of any kind the Subordinated Lender may now have and hereafter acquire (or be deemed to now have or hereafter acquire) against either Company or any Obligor and/or any Company Property, if any, shall be subordinate and subject to the Liens and rights against either Company, Obligors and/or Company Property of the Senior Lenders arising from or out of the Senior Indebtedness, regardless of the order, time or manner in which any Liens attach to or are perfected in any Company Property.

(b) If (x) either Company or any Obligor, as the case may be, desires to make any payment or to sell any Company Property as to which the Senior Lenders have provided their written consent or which is otherwise permitted under the Senior Loan Documents or (y) the Senior Lenders release their Lien in connection with any sale or disposition of any Company Property, the Subordinated Lender shall be deemed to have consented to such disposition and shall execute such releases with respect to such Company Property to be sold as the Senior Agent or the Senior Lenders request to evidence the release of any Lien against such property the Subordinated Lender may have or be deemed to have. The Subordinated Lender hereby irrevocably appoints the holders of the Senior Indebtedness, or the Senior Agent on their behalf, as the true and lawful attorneys of the Subordinated Lender for the purpose of executing and filing any such releases. The Subordinated Lender hereby waives any rights the Subordinated Lender has or may have in the future to object to the appointment of a receiver for all or any portion of the equity or the assets of either Company or any Obligor or to require any Senior Lender to marshal the collateral and agrees that each Senior Lender may proceed against the collateral in any order that it deems appropriate in the exercise of its absolute discretion.

### 4. Warranties and Representations of Companies and Subordinated Lender.

(a) Each Company and the Subordinated Lender hereby severally represent and warrant to the Senior Lenders that each Senior Lender has been furnished with a true and correct copy of all instruments and securities evidencing or pertaining to the Subordinated Indebtedness.

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(b) Each Company hereby represents and warrants to the Senior Lenders that this Agreement has been duly executed and delivered by each Company and constitutes a legal, valid and binding obligation of each Company

enforceable in accordance with its terms except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect affecting generally the enforcement of creditors' rights and remedies and general principles of equity.

(c) The Subordinated Lender represents and warrants to the Senior Lenders: (i) that this Agreement has been duly executed and delivered by the Subordinated Lender and constitutes a legal, valid and binding obligation of the Subordinated Lender enforceable against the Subordinated Lender in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect affecting generally the enforcement of creditors' rights and remedies and general principles of equity; (ii) that the Subordinated Lender has not relied and shall not rely on any representation or information of any nature made by or received from any Senior Lender relative to either Company or any Obligor in deciding to execute this Agreement or to permit it to continue in effect; and (iii) that the Subordinated Lender is the current holder of the Subordinated Indebtedness.

(d) Notwithstanding anything contained in this Agreement to the contrary, the Subordinated Lender hereby represents and warrants to the Senior Agent and each Company that the Subordinated Lender has no security interest in or Lien on any assets of either Company or any Obligor or any Company Property.

5. Negative Covenants. Until all of the Senior Indebtedness has been Finally Paid: (A) the Subordinated Lender shall not demand, accept or acquire from either Company or any Obligor any security interest in or Lien on any assets of either Company or any Obligor or any Company Property, nor any collateral from either Company or any Obligor; (B) neither Company shall discharge the Subordinated Indebtedness other than in accordance with the terms of the Subordinated Documents; (C) the Subordinated Lender shall not demand or accept from either Company, any Obligor or other Person any consideration which would result in a discharge of the Subordinated Indebtedness; (D) the Subordinated Lender shall not hereafter give any subordination in respect of the Subordinated Indebtedness; and (E) neither Company shall hereafter issue any instrument, security or other writing evidencing any part of the Subordinated Indebtedness, and the Subordinated Lender shall not receive any such writing, except upon the condition that such security shall bear the legend referred to in Section 25 below and a true copy thereof shall be thereupon promptly furnished to the Senior Agent.

6. Permitted Payments. Notwithstanding the terms of the Subordinated Documents, each Company hereby agrees that it shall not make (and will not permit any other Obligor to make), and the Subordinated Lender hereby agrees that it will not accept, any payment or distribution with respect to the Subordinated Indebtedness including any payment or distribution received through the exercise of any right of setoff, counterclaim or crossclaim, until the Senior Indebtedness is Finally Paid; provided that the Companies may make to the Subordinated Lender and the Subordinated Lender may accept payments in kind (but not in cash) including, without limitation, services in connection with that certain Processing Agreement, between Akorn and

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the Subordinated Lender, dated as of December 20, 2001 (the "Processing Agreement"); provided further that notwithstanding anything hereunder to the contrary, the Subordinated Lender shall retain all of its rights as a purchaser of Akorn's goods and services under the Processing Agreement, and nothing hereunder shall be construed as the Subordinated Lender's relinquishment or waiver, or assignment to the Senior Agent or the Senior Lenders of the Subordinated Lender's right to reject Akorn's nonconforming goods or services, if any, or to assert and contest claims against Akorn for damages resulting therefrom.

7. Forbearance of Legal Remedies.

(a) Until the Senior Indebtedness is Finally Paid, the Subordinated Lender shall not, without the prior written consent of the Senior Agent, exercise any Subordinated Lender Remedies.

(b) Notwithstanding anything contained herein to the contrary or any rights or remedies available to the Subordinated Lender under any of the Subordinated Documents, applicable law or otherwise, prior to the time that the

Senior Indebtedness has been Finally Paid, any payments, distributions or other proceeds obtained by any Subordinated Lender from the exercise of any Subordinated Lender Remedies shall in any event be held in trust by it for the benefit of the Senior Agent and the Senior Lenders and promptly paid or delivered to the Senior Agent for the benefit of the Senior Lenders in the form received.

8. Dissolution, Liquidation, Reorganization or Bankruptcy. (a) In the event of any Proceeding involving either Company or any Obligor:

(i) all Senior Indebtedness shall be Finally Paid before the Subordinated Lender shall be entitled to receive any payment on account of any Subordinated Indebtedness; and

(ii) any payment or distribution of assets of such Person of any kind or character, whether in cash, property or securities, to which the Subordinated Lender would be entitled except for these provisions, shall be paid by the liquidating trustee or agent or other Person making such payment or distribution directly to the Senior Agent, to the extent necessary to make Final Payment of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution or provision therefor to the holders of such Senior Indebtedness. The Subordinated Lender irrevocably authorizes, empowers and directs any debtor, debtor-in-possession, receiver, trustee or agent or other person having authority, to pay or otherwise deliver all such payments or distributions to Senior Agent.

(b) Until the Senior Indebtedness has been Finally Paid, if a Proceeding shall occur and be continuing, the Subordinated Lender shall file all claims it may have against either Company or any Obligor, and shall direct the debtor in possession or trustee in bankruptcy, as appropriate, to pay over to the Senior Agent all amounts due to the Subordinated Lender on account of the Subordinated Indebtedness until the Senior Indebtedness has been Finally Paid. If the Subordinated Lender fail to file such claims or to vote such claims prior to 30 days before the expiration of time to do so, the Senior Agent may (but shall have no obligation to) file and/or

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vote such claims in the Subordinated Lender's name on behalf of the Senior Lenders. If the Senior Agent votes any such claim in accordance with the authority granted hereof, the Subordinated Lender shall not be entitled to withdraw or change such vote.

(c) The Subordinated Lender agrees, in connection with any such Proceeding, that while it shall retain the right to vote and otherwise act in any such proceeding (including the right to vote to accept or reject any plan of partial or complete liquidation, reorganization, arrangement, composition or extension), it will not take any action or vote in any way so as to (i) contest the validity of the Liens securing the Senior Indebtedness, (ii) contest the enforceability of any of the Senior Loan Documents, (iii) contest the Senior Lenders' priority position over the Subordinated Lender created by this Agreement or (iv) take any position or action which would have directly or indirectly any of the following effects: (A) extension of the final maturity of and/or forgiveness, reduction or cram-down of the Senior Indebtedness or deferral of any required payment in respect of Senior Indebtedness, (B) opposing or objecting to initiatives or claims by the Senior Lenders for adequate protection or relief from the automatic stay, use of cash collateral or super-priority expense of administration for failure of adequate protection, (C) challenging in any respect treatment of the Senior Indebtedness as a first priority perfected fully secured claim, (D) blocking current payment of any obligation in respect of Senior Indebtedness, (E) assenting to or supporting any requested extension of the exclusivity period for the submission by Company of any plan of reorganization or liquidation under the Bankruptcy Code unless such extension is assented to or supported by the Senior Lenders; and (F) opposing or objecting to any sale or lease of any Company Property that has been consented to by the holders of Senior Indebtedness. In the event of any violation of any provisions of this section by any Subordinated Lender, the Senior Lenders may in the name of the Subordinated Lender, or in their own name thereafter amend, modify or rescind any such prior act taken or vote issued, in violation of this Agreement.

(d) Until the Senior Indebtedness has been Finally Paid, if a Proceeding shall occur and be continuing, the Subordinated Lender hereby (i) expressly consent to any Senior Lender's providing post-petition financing to

either Company or any Obligor or the granting by either Company or any Obligor to any Senior Lender of senior liens and priorities in connection therewith and/or the use of cash collateral and (ii) agree that adequate notice of such financing or cash collateral usage to the Subordinated Lender shall have been provided if the Subordinated Lender received notice in accordance with Section 16 hereof 2 Business Days prior to the entry of any order approving such financing or cash collateral usage.

(e) If any Subordinated Lender has or at any time acquires any security interest or Lien for the Subordinated Indebtedness, the Subordinated Lender agrees not to (i) initiate any proceeding involving the marshalling of any Company Property (whether in a Proceeding or otherwise) or (ii) assert any right it may have to "adequate protection" of its interest, if any, in such security in any Proceeding and agrees that it will not seek to have the automatic stay lifted with respect to such security, in each case without the prior written consent of the Senior Agent. The Subordinated Lender waives any claim or defense the Subordinated Lender may now or hereafter have arising out of the election by any Senior Lender in any Proceeding instituted under Chapter 11 of the Bankruptcy Code of any use of cash collateral, any borrowing or any grant of a security interest under Sections 363 and/or 364 of the Bankruptcy

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Code by either Company or any Obligor, as debtor-in-possession. The Subordinated Lender agrees that it will not object to or oppose a sale or other disposition of any property securing all or any part of the Senior Indebtedness free and clear of any security interests or other Liens or other claims of the Subordinated Lender under Section 363 of the Bankruptcy Code if the Senior Agent has consented to such sale or disposition. The Subordinated Lender further agrees that it will not seek to participate on any creditors committee in respect of the Subordinated Indebtedness without the Senior Agent's prior written consent. To the extent that any Senior Lender receives payments on, or proceeds of collateral for, the Senior Indebtedness which are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law, or equitable cause, then as between such Senior Lender and the Subordinated Lender hereunder, to the extent of such payment or proceeds received, the Senior Indebtedness, or part thereof, intended to be satisfied shall be revived and continue in full force and effect as if such payments or proceeds had not been received by such Senior Lender.

9. Obligation of Company Unconditional. Nothing contained herein or in the Senior Loan Documents is intended to or shall impair, as between either Company and the Subordinated Lender only, the obligation of the Companies, which is absolute and unconditional, to pay to the Subordinated Lender the Subordinated Indebtedness as and when the same shall become due and payable in accordance with their terms, or to affect the relative rights of the Subordinated Lender and creditors of the Companies other than the Senior Lenders.

10. Subordination Rights Not Impaired by Acts or Omissions of either Company or Holders of Senior Indebtedness.

(a) No right of any present or future holders of any Senior Indebtedness to enforce the subordination provisions as provided herein shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of either Company; by any act or failure to act by any such holder; by any act or failure to act by any other holder of the Senior Indebtedness; or by any noncompliance by either Company with the terms hereof, regardless of any knowledge thereof which any such holder may have or be otherwise charged with. The Subordinated Lender shall not be released, nor shall the Subordinated Lender's obligation hereunder be in anyway diminished, by any of the following: (i) the exercise or the failure to exercise by any Senior Lender of any rights or remedies conferred on it or them under the Senior Loan Documents, hereunder or existing at law or otherwise, or against any Company Property; (ii) the commencement of an action at law or the recovery of a judgment at law against either Company or any Obligor for the performance of the Senior Indebtedness and the enforcement thereof through levy or execution or otherwise; (iii) the taking or institution or any other action or proceeding against either Company or any Obligor; (iv) any delay in taking, pursuing, or exercising any of the foregoing actions, rights, powers, or remedies (even though requested by Subordinated Lender) by any Senior Lender or anyone acting for any Senior Lender; (v) any lack of validity or enforceability of any Senior Loan Document; (vi) the release or non-perfection of any collateral securing the Senior Indebtedness; or (vii) any other circumstance which might otherwise constitute a defense available to,

or a discharge of, either Company or any Obligor in respect of the Senior Indebtedness or Subordinated Lender in respect of this Agreement.

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(b) Without limiting the generality of the foregoing, and anything else contained herein to the contrary notwithstanding, any Senior Lender, from time to time, without prior notice to or the consent of the Subordinated Lender, may take all or any of the following actions without in any manner affecting or impairing the obligation or liability of the Subordinated Lender hereunder: (i) obtain a Lien in any property to secure any of the Senior Indebtedness; (ii) obtain the primary and secondary liability of any party or parties with respect to any of the Senior Indebtedness; (iii) renew, extend, or otherwise change the time for payment of the Senior Indebtedness or any installment thereof for any period, or change the interest rates and fees with respect to the Senior Indebtedness; (iv) renew, reaffirm, extend, release or otherwise change any liability of any nature of any person or entity, including any Obligor, with respect to the Senior Indebtedness; (v) exchange, enforce, waive, release, and apply any Company Property and direct the order or manner of sale thereof as such Senior Lender may in its discretion determine; (vi) enforce its rights hereunder, whether or not such Senior Lender shall proceed against any other Person; (vii) exercise its rights to consent to any action or non-action of either Company or any Obligor which may violate the covenants and agreements contained in the Senior Loan Documents, with or without consideration, on such terms and conditions as may be acceptable to it; or (viii) exercise any of its rights conferred by the Senior Loan Documents or by law.

11. Waivers. Each Company and the Subordinated Lender each hereby waive, to the fullest extent permitted by law, any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy of specific performance of this Agreement in any action brought therefor by the Senior Lenders. To the fullest extent permitted by law and except as to any notices specified in this Agreement, notices regarding the intended sale or disposition of any portion of the collateral held by the Senior Lenders, or any notice which may not be waived in accordance with the UCC, each Company and the Subordinated Lender each hereby further waive: (a) presentment, demand, protest and notice of protest in connection with all negotiable instruments evidencing all or any portion of the Senior Indebtedness or the Subordinated Indebtedness to which the Companies or the Subordinated Lender may be a party and (b) prior notice of and consent to any loans made or extensions granted. The Subordinated Lender consents to any release, renewal, extension, compromise or postponement of the time of payment of the Senior Indebtedness, to any substitution, exchange or release of collateral therefor, and to the addition or release of any person primarily or secondarily liable thereon.

12. No Estoppel. Neither the failure nor any delay on the part of any Senior Lender to exercise any right, remedy, power or privilege hereunder shall operate as a waiver thereof or give rise to an estoppel, nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then only to the extent specifically stated in such writing.

13. Incorrect Payments; Specific Performance. If either Company or any Obligor shall make or the Subordinated Lender shall collect any payment on account of the principal of, premium or interest on or any other amounts due under the Subordinated Indebtedness in

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contravention of this Agreement, such payments shall be held in trust by the Subordinated Lender and not commingled with any assets of any Subordinated Lender and shall be paid over and delivered to the Senior Agent, for the benefit of the Senior Lenders, promptly upon receipt thereof. At any time any Subordinated Lender fails to comply with any provision of this Agreement, the Senior Lenders may demand specific performance of this Agreement, whether or not either Company has complied with this Agreement, and may exercise any other remedy available at law or equity.

14. Amendment of the Subordinated Documents and Senior Loan Documents. The Subordinated Lender agrees that it will not, without the prior written consent



of the Senior Agent, agree to any amendment, modification, waiver or supplement to the Subordinated Documents. The Senior Indebtedness may at any time be amended, extended, modified, restated or waived without limitation, without notice to, or the consent of, the Subordinated Lender.

15. Inconsistent or Conflicting Provisions; Construction. If a provision of the Senior Loan Documents or the Subordinated Documents is inconsistent or conflicts with the provisions of this Agreement, the provisions of this Agreement shall govern and prevail. The term "including" is not limiting and means "including without limitation." In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including."

16. Notices. Any notice, consent or other communication provided for in this Agreement shall be in writing and shall be delivered personally (effective upon delivery), via facsimile (effective upon confirmation of transmission), via overnight courier (effective the next Business Day after dispatch if instructed to deliver on next business day) or via U.S. Mail (effective 3 days after mailing, postage prepaid, first class) to each party at its address(es) and/or facsimile number(s) set forth on Annex I hereto, or to such other address as either party shall specify to the other in writing from time to time. The Subordinated Lender shall provide the Senior Agent with written notice promptly upon the occurrence of an event of default under the Subordinated Documents.

17. Entire Agreement. This Agreement constitutes and expresses the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, whether express or implied, oral or written. Neither this Agreement nor any portion or provision hereof may be changed, waived or amended orally or in any manner other than by an agreement in writing signed by the Senior Agent and the Subordinated Lender; provided that any such change, waiver or amendment shall be binding upon each Company by their written consent thereto. This Agreement shall constitute a Loan Document and the recitals hereto shall constitute part of this Agreement.

18. Additional Documentation. Each Company and the Subordinated Lender shall execute and deliver to the Senior Agent such further instruments and shall take such further action as the Senior Agent may at any time or times reasonably request in order to carry out the provisions and intent of this Agreement.

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19. Expenses. The Companies, joint and severally, agree to pay the Senior Agent and the Senior Lenders on demand all expenses of every kind, including Attorney Costs, that the Senior Agent or the Senior Lenders incur in enforcing any of their rights against either Company and/or the Subordinated Lender under this Agreement.

20. Successors and Assigns.

(a) This Agreement shall inure to the benefit of each Senior Lender, the Subordinated Lender, and their respective successors and assigns, and shall be binding upon each Company and its successors and assigns, and each Senior Lender, the Subordinated Lender and their respective transferees, successors and assigns, including any subsequent holders of the Subordinated Note. Any Senior Lender, without prior notice or consent of any kind, may sell, assign or transfer any Senior Indebtedness, and in such event each and every immediate and successive assignee or transferee thereof may be given the right by such Person to enforce this Agreement in full against each Company and the Subordinated Lender, by suit or otherwise, for its own benefit.

(b) The Subordinated Lender shall not sell, assign, pledge, dispose of or otherwise transfer all or any portion of the Subordinated Indebtedness or any Subordinated Document without the prior written consent of the Senior Agent.

(c) Notwithstanding the failure of any transferee to execute or deliver an agreement substantially identical to this Agreement, the subordination effected hereby shall survive any sale, assignment, pledge, disposition or other transfer of all or any portion of the Subordinated Indebtedness, and the terms of this Agreement shall be binding upon the successors and assigns of each Subordinated Indebtedness, as provided in this Section 20.

21. Covenant Not to Challenge. This Agreement has been negotiated by the parties with the expectation and in reliance upon the assumption that the instruments and documents evidencing the Senior Indebtedness are valid and enforceable. In determining whether to enter into this Agreement, the Subordinated Lender has assumed such validity and enforceability, and has agreed to the provisions contained herein, without relying upon any reservation of a right to challenge or call into question such validity or enforceability. As between any Senior Lender and any Subordinated Lender, the Subordinated Lender hereby covenants and agrees, to the fullest extent permitted by law, that it shall not initiate in any proceeding a challenge to the validity or enforceability of the documents and instruments evidencing the Senior Indebtedness or the validity, perfection or priority of any Lien of the Senior Agent or the Senior Lenders securing the Senior Indebtedness, nor shall the Subordinated Lender instigate other parties to raise any such challenges, nor shall the Subordinated Lender participate in or otherwise assert any such challenges which are raised by other parties.

22. Subrogation. Subject to the Final Payment of all Senior Indebtedness and the provisions of Section 24 hereof, the Subordinated Lender shall be subrogated to the rights of the Senior Lenders to receive payments and distributions of cash, property and securities applicable to the Senior Indebtedness to the extent that distributions otherwise payable to the Subordinated Lender have been applied to the Senior Indebtedness, until all amounts payable under the

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Subordinated Indebtedness shall have been paid in full. For purposes of such subrogation, no payments or distributions to the Senior Lenders of any cash, property or securities to which the Subordinated Lender would be entitled except for the provisions of this Agreement, and no payment pursuant to the provisions of this Agreement to the Senior Lenders by the Subordinated Lender shall, as among the Companies and their creditors other than the Senior Lenders, be deemed to be a payment or distribution by either Company to or on account of the Senior Indebtedness. If either Company fails to make any payment on account of the Subordinated Indebtedness by reason of any provision contained herein, such failure shall, notwithstanding such provision contained herein, constitute a default with respect to the Subordinated Indebtedness if and to the extent such failure would otherwise constitute such a default in accordance with the terms of the Subordinated Indebtedness.

23. Termination of Agreement. This Agreement shall continue and shall be irrevocable until the date all of the Senior Indebtedness has been Finally Paid or otherwise discharged and released in an express writing to such effect by the Senior Lenders.

24. Reinstatement. The obligations of the Subordinated Lender under the Agreement shall continue to be effective, or be reinstated, as the case may be, if at any time any payment in respect of any Senior Indebtedness is rescinded or must otherwise be restored or returned by any Senior Lender by reason of any bankruptcy, reorganization, arrangement, composition or similar proceeding or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, either Company, any Obligor or any substantial part of its property, or otherwise, all as though such payment had not been made.

25. Legends. Until the termination of this Agreement, the Subordinated Lender will cause to be clearly, conspicuously and prominently inserted on the face of the Subordinated Note and any other Subordinated Document, as well as any renewals or replacements thereof, the following legend:

"THIS INSTRUMENT AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN THAT CERTAIN SUBORDINATION AND INTERCREDITOR AGREEMENT (THE "SUBORDINATION AGREEMENT") DATED AS OF OCTOBER 7, 2003 AMONG NEOPHARM, INC., A DELAWARE CORPORATION, AKORN, INC., A LOUISIANA CORPORATION ("AKORN"), AND AKORN (NEW JERSEY), INC., AN ILLINOIS CORPORATION ("AKORN NJ"; TOGETHER WITH AKORN, EACH A "COMPANY" AND COLLECTIVELY THE "COMPANIES") AND LASALLE BANK NATIONAL ASSOCIATION (TOGETHER WITH ITS SUCCESSORS AND ASSIGNS, THE "SENIOR AGENT"), TO THE INDEBTEDNESS (INCLUDING INTEREST) OWED BY THE COMPANIES PURSUANT TO THAT CERTAIN CREDIT AGREEMENT DATED AS OF OCTOBER 7, 2003 AMONG THE COMPANIES, THE SENIOR AGENT AND THE LENDERS FROM TIME TO TIME PARTY THERETO, AND THE OTHER LOAN DOCUMENTS (AS DEFINED IN THE

DOCUMENTS MAY BE AMENDED, RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME AS CONTEMPLATED BY THE SUBORDINATION AGREEMENT; AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE SUBORDINATION AGREEMENT."

Each Company's books shall be marked to evidence the subordination of all of the Subordinated Indebtedness to the holders of Senior Indebtedness, in accordance with the terms of this Agreement. Each Senior Lender is authorized to examine such books from time to time in accordance with the terms of the Credit Agreement and to make any notations required by this Agreement.

26. Governing Law. THIS AGREEMENT SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF ILLINOIS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES. EACH COMPANY AND THE SUBORDINATED LENDER HEREBY AGREE THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY EACH COMPANY OR THE SUBORDINATED LENDER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT SHALL BE LITIGATED IN A COOK COUNTY, ILLINOIS COURT OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF ANY SENIOR LENDER INITIATES SUCH ACTION, IN ADDITION TO THE FOREGOING COURTS, ANY COURT IN WHICH SUCH SENIOR LENDER SHALL INITIATE SUCH ACTION, TO THE EXTENT SUCH COURT HAS JURISDICTION. EACH COMPANY AND THE SUBORDINATED LENDER EACH HEREBY EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY ANY SENIOR LENDER AND HEREBY WAIVE ANY CLAIM THAT SUCH COURTS ARE AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED UPON LACK OF VENUE. THE EXCLUSIVE CHOICE OF FORUM AS SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY ANY SENIOR LENDER, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY ANY SENIOR LENDER, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND EACH COMPANY AND THE SUBORDINATED LENDER HEREBY WAIVE THE RIGHT TO COLLATERALLY ATTACK SUCH JUDGMENT OR ACTION.

27. Jury Trial. THE SENIOR AGENT, THE SUBORDINATED LENDER AND EACH COMPANY WAIVE TRIAL BY JURY IN ANY DISPUTE ARISING FROM, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

28. Severability. The provisions of this Agreement are independent of and separable from each other. If any provision hereof shall for any reason be held invalid or unenforceable, it is the intent of the parties that such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof, and that this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

29. Counterparts. This Agreement may be executed in any number of separate counterparts, all of which, when taken together, shall constitute one and the same instrument, notwithstanding the fact that all parties did not sign the same counterpart. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof.

30. Sections. The section headings used in this Agreement are for convenience only and shall not affect the interpretation of any of the provisions hereof.

31. Defines Rights of Creditors. The provisions of this Agreement are solely for the purpose of defining the relative rights of the Senior Lenders and the Subordinated Lender and shall not be deemed to create any rights or priorities in favor of any other Person, including each Company.

[signature pages follow]

The parties hereto have executed this Agreement as of the date first above written.

COMPANIES:

AKORN, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AKORN (NEW JERSEY), INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SENIOR AGENT:

LASALLE BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SUBORDINATED LENDER:

NEOPHARM, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ANNEX I

NOTICE ADDRESSES

COMPANIES:

c/o Akorn, Inc.  
2500 Milbrook Drive  
Buffalo Grove, Illinois 60089  
Attention: \_\_\_\_\_

Facsimile: \_\_\_\_\_

SENIOR AGENT:

LaSalle Bank National Association  
135 South LaSalle Street  
Chicago, Illinois 60603  
Attention: Patrick O'Toole  
Facsimile: \_\_\_\_\_

SUBORDINATED LENDER:

Neopharm, Inc.

150 Field Drive, Suite 195  
Lake Forest, Illinois 60045  
Facsimile No.: (847) 295-8854  
Attn: James Hussey, Chief Executive Officer

With a copy to:

McGuireWoods Ross & Hardies  
150 North Michigan Avenue  
Chicago, Illinois 60601-7567  
Facsimile No.: (312) 750-8600  
Attn: Scott Becker

FOURTH AMENDMENT TO CONVERTIBLE BRIDGE LOAN  
AND WARRANT AGREEMENT

THIS FOURTH AMENDMENT TO CONVERTIBLE BRIDGE LOAN AND WARRANT AGREEMENT (this "Amendment") is made as of October 7, 2003, by and between Akorn, Inc. a Louisiana corporation (the "Company"), and The John N. Kapoor Trust dated 9/20/89 (the "Lender").

WHEREAS, the Company and the Lender are parties to that certain Convertible Bridge Loan and Warrant Agreement dated as of July 12, 2001 (as amended from time to time, the "Agreement"); and

WHEREAS, the Company and the Lender wish to further amend the Agreement pursuant to the terms set forth herein.

NOW, THEREFORE, for and in consideration of the premises and mutual agreements herein contained and for the purposes of setting forth the terms and conditions of this Amendment, the parties, intending to be bound, hereby agree as follows:

1. Incorporation of the Agreement. All capitalized terms which are not defined hereunder shall have the same meanings as set forth in the Agreement. To the extent any terms and provisions of the Agreement are inconsistent with the amendments set forth in Paragraph 2 below, such terms and provisions shall be deemed superseded hereby. Except as specifically set forth herein, the Agreement shall remain in full force and effect and its provisions shall be binding on the parties hereto.

2. Amendments to the Agreement.

2.1 Definitions. The definition of "Senior Loan Agreement" is hereby amended and restated in its entirety to read as follows:

"Senior Loan Agreement" shall mean that certain Credit Agreement dated as of October 7, 2003, among Akorn, Inc., Akorn (New Jersey), Inc., LaSalle Bank National Association and certain other parties thereto.

2.2 Section 9.

(a) Section 9(c) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(c) (i) any default or breach by the Company of or under any agreement between the Company and NeoPharm, Inc. for borrowed money, (ii) a material breach under any real property lease agreements or capital equipment lease agreements, by which the Company is bound or obligated, or (iii) any default under the Senior Loan Agreement pursuant to which the lenders parties thereto accelerate the maturity of the indebtedness thereunder;"

(b) Section 9(d) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(d) [INTENTIONALLY OMITTED];"

(c) Section 9(e) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(e) The Company shall have (i) failed to obtain all necessary shareholder consents to the Tranche A Loan, Tranche B Loan, the issuance of the Tranche A Note and the issuance of the Tranche B Note on or prior to September 30, 2004, or (ii) on or prior to September 30, 2004, provided the Lender with an opinion of counsel reasonably acceptable to the Lender stating that no such shareholder consents are currently required."

2.3 Section 10. Section 10.14 of the Agreement is hereby amended and restated in its entirety to read as follows:

"10.14 Subordination. The indebtedness evidenced by the Notes

shall be subordinated to certain indebtedness of the Company pursuant to that certain Subordination and Intercreditor Agreement dated as of October 7, 2003 (the "Subordination Agreement"), executed by the Lender in favor of LaSalle Bank National Association and acknowledged by the Company and Akorn (New Jersey), Inc."

3. Effectuation. The amendment to the Agreement contemplated by this Amendment shall be deemed effective immediately upon the full execution of this Amendment and without any further action required by the parties hereto. There are no conditions precedent or subsequent to the effectiveness of this Amendment.

4. Fees and Expenses. The Company agrees to pay on demand all costs and expenses of or incurred by the Lender (including, but not limited to, reasonable legal fees and expenses) in connection with the evaluation, negotiation, preparation, execution and delivery of this Amendment, to the extent permitted by that certain Reaffirmation of Subordination and Intercreditor Agreement dated the date hereof from the Lender in favor of NeoPharm, Inc.

5. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. One or more counterparts of this Amendment may be delivered by facsimile, with the intention that delivery by such means shall have the same effect as delivery of an original counterpart thereof.

[SIGNATURE PAGE FOLLOWS]

\* \* \* \* \*

IN WITNESS WHEREOF, the parties have executed this Fourth Amendment to Convertible Bridge Loan and Warrant Agreement as of the date first written above.

AKORN, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE JOHN N. KAPOOR TRUST DATED  
9/20/89

By: \_\_\_\_\_  
John N. Kapoor, Trustee

ACKNOWLEDGMENT OF SUBORDINATION

THIS ACKNOWLEDGMENT OF SUBORDINATION (this "Acknowledgment") is made as of October 7, 2003, by and between Akorn, Inc. a Louisiana corporation (the "Company"), and The John N. Kapoor Trust dated 9/20/89 (the "Lender").

WHEREAS, the Company and the Lender are parties to that certain Convertible Bridge Loan and Warrant Agreement dated as of July 12, 2001 (as amended from time to time, most recently pursuant to the terms of that certain Fourth Amendment dated the date hereof, the "Agreement");

WHEREAS, in connection with the refinancing of certain indebtedness of the Company pursuant to the terms of that certain Credit Agreement dated the date hereof, among the Company, Akorn (New Jersey), Inc., LaSalle Bank National Association ("LaSalle") and certain other parties thereto, the Lender has entered into that certain Subordination and Intercreditor Agreement dated the date hereof (the "Subordination Agreement"), in favor of LaSalle and acknowledged by the Company and Akorn (New Jersey), Inc.; and

WHEREAS, the Company and the Lender wish to acknowledge certain matters as set forth herein.

NOW, THEREFORE, for and in consideration of the premises and mutual agreements contained in the Agreement, the parties, intending to be bound, hereby agree and acknowledge as follows:

- 1. Incorporation of the Agreement. All capitalized terms which are not defined hereunder shall have the same meanings as set forth in the Agreement.
- 2. Acknowledgment. Each of the Company and the Lender acknowledges that the indebtedness represented by the Note to which this Acknowledgement is affixed (regardless of when or whether this Acknowledgment is so affixed) is subject to the terms contained in the Subordination Agreement.
- 3. Effectuation. This Acknowledgment shall be deemed effective immediately upon its full execution and without any further action required by the parties hereto. There are no conditions precedent or subsequent to the effectiveness of this Acknowledgment.
- 4. Counterparts. This Acknowledgment may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. One or more counterparts of this Acknowledgment may be delivered by facsimile, with the intention that delivery by such means shall have the same effect as delivery of an original counterpart thereof.

[SIGNATURE PAGE FOLLOWS]

\* \* \* \* \*

IN WITNESS WHEREOF, the parties have executed this Acknowledgment as of the date first written above.

AKORN, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE JOHN N. KAPOOR TRUST DATED  
9/20/89

By: \_\_\_\_\_  
John N. Kapoor, Trustee





SUBORDINATION AND INTERCREDITOR AGREEMENT  
(LaSalle Bank National Association/John N. Kapoor Trust)

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT dated as of October 7, 2003 (as amended, supplemented or otherwise modified from time to time, this "Agreement") is entered into among AKORN, INC., a Louisiana corporation ("Akorn"), AKORN (NEW JERSEY), INC., an Illinois corporation ("Akorn NJ"; together with Akorn, each a "Company" and collectively, the "Companies"), LASALLE BANK NATIONAL ASSOCIATION, as Senior Agent (as hereinafter defined) for Senior Lenders under the Credit Agreement (as hereinafter defined), and THE JOHN N. KAPOOR TRUST dated September 20, 1989 (the "Subordinated Lender").

RECITALS

A. The Senior Agent, certain financial institutions (together with the successors and assigns thereof, "Senior Lenders") and the Companies have entered into a Credit Agreement, dated as of the date hereof (as from time to time amended, modified, extended, renewed, refinanced, or restated, the "Credit Agreement"), together with the other Loan Documents (as defined in the Credit Agreement), whereby the Senior Lenders have made and shall make available to each of the Companies certain loans and other financial accommodations therein set forth. All of the Companies' obligations under the Senior Loan Documents (as hereinafter defined) are secured by assignments of and security interests in substantially all of the now or hereafter acquired assets of the Companies and their Subsidiaries, all as more fully set forth in the Loan Documents.

B. Akorn has issued (i) that certain Convertible Promissory Note dated July 12, 2001 in the principal amount of \$3,000,000 and (ii) that certain Convertible Promissory Note dated July 12, 2001 in the principal amount of \$2,000,000 (individually and/or collectively, the "Subordinated Notes", together with all guarantees and other documents or instruments executed in connection therewith (as from time to time modified, extended, renewed, refinanced or restated to the extent permitted by the terms of this Agreement, collectively the "Subordinated Documents")) in favor of the Subordinated Lender.

C. As a condition of the financing accommodations under the Loan Documents, the parties hereto are required to enter into this Agreement to establish the relative rights and priorities of the Senior Agent, the Senior Lenders and the Subordinated Lender under the Senior Loan Documents and the Subordinated Documents.

D. The Subordinated Lender will benefit from the financing accommodations made by the Senior Lenders under the Credit Agreement and the other Loan Documents. The Subordinated Lender and the Companies desire to enter into this Agreement in order to induce the Senior Lenders to enter into the Credit Agreement. The Subordinated Lender acknowledges

that the Senior Lenders would not enter into the Senior Loan Documents but for the execution of this Agreement.

In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. Definitions. Except as otherwise provided herein, all capitalized terms used in this Agreement shall have the meanings ascribed to such terms in the Credit Agreement, provided that the following terms shall have the meanings set forth below:

"Bankruptcy Code" means Title 11 of the United States Code (11 U.S.C. Section 101 et. seq.) or any replacement or supplemental federal statute dealing with the bankruptcy of debtors.

"Company" and "Companies" shall have the meaning set forth in the preamble hereof.

"Company Property" means all assets, property and property rights, of any kind or nature, tangible or intangible, now or hereafter existing, in which either Company or any Obligor owns, asserts or maintains an interest.

"Credit Agreement" shall have the meaning set forth in the recitals hereof.

"Finally Paid" or "Final Payment," when used in connection with the Senior Indebtedness, means the full and indefeasible payment in cash of all of the Senior Indebtedness and the irrevocable termination of all Commitments of all the Senior Lenders under the Senior Loan Documents.

"Liens" means any mortgage, deed of trust, pledge, lien, security interest, charge, set-off right or other encumbrance, whether now existing or hereafter created, acquired or arising.

"Obligor" means any guarantor or obligor of any Senior Indebtedness.

"Proceeding" means any voluntary or involuntary proceeding commenced by or against either Company or any Obligor under any provision of the Bankruptcy Code, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with its creditors, or proceedings seeking dissolution, receivership, reorganization, arrangement, or other similar relief.

"Senior Agent" means LaSalle Bank National Association, as Administrative Agent for Senior Lenders, or any other Person appointed by the holders of the Senior Indebtedness as administrative agent for purposes of the Senior Loan Documents and this Agreement, together with the successors and assigns of all of the foregoing.

"Senior Indebtedness" means all obligations, liabilities and indebtedness of every nature of either Company or any Obligor from time to time owed to the Senior Agent or any Senior Lender under the Senior Loan Documents, including the principal amount of all debts,

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claims and indebtedness, accrued and unpaid interest and all premium, fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable, whether before or after the filing of a Proceeding, including any Hedging Obligations and Bank Product Obligations at any time due and owing to any Senior Lender, together with (a) any indebtedness which refinances such principal, interest or other obligations and any amendments, modifications, renewals, restatements, refinancings or extensions thereof and (b) any interest accruing thereon after the commencement of a Proceeding, without regard to whether or not such interest is allowed in any Proceeding. Senior Indebtedness shall be deemed to be outstanding until it is Finally Paid.

"Senior Loan Documents" means the Credit Agreement, the other Loan Documents and all other agreements, documents and instruments executed from time to time in connection therewith, in each case as from time to time renewed, extended, amended, restated or modified and all agreements and instruments evidencing full or partial refundings or refinancings of the indebtedness thereunder.

"Subordinated Indebtedness" means all obligations, liabilities and indebtedness of every nature of either Company or any Obligor from time to time owed to the Subordinated Lender under the Subordinated Documents, including the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all premium, fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable under or in respect of the Subordinated Documents, whether before or after the filing of a Proceeding (including any amounts payable by either Company or any Obligor in connection with put, redemption, repurchase or repurchase rights under any warrants or any Capital Securities of either Company or any Obligor held by the Subordinated Lender), together with (a) any amendments, modifications, renewals, restatements, refinancings or extensions thereof and (b) any interest accruing thereon after the commencement of a Proceeding, without regard to whether or not such interest is allowed in any Proceeding.

"Subordinated Lender Remedies" means any action (a) to take from or for the account of either Company, any Obligor, any other guarantor of the Subordinated Indebtedness or any other Person, by set-off or in any other manner, the whole or any part of any moneys which may now or hereafter be owing by either Company (other than receipt of payments of Subordinated Indebtedness to the extent permitted by this Agreement), any Obligor, any such guarantor or any other Person with respect to the Subordinated Indebtedness, (b) to sue for

payment of, or to initiate or participate with others in any suit, action or proceeding (including any Proceeding) against either Company, any Obligor, any such guarantor or any other Person to (i) enforce payment of or to collect the whole or any part of the Subordinated Indebtedness or (ii) commence judicial enforcement of any of the rights and remedies under the Subordinated Documents or applicable law with respect to the Subordinated Indebtedness, (c) to accelerate the Subordinated Indebtedness, (d) to exercise any put, repurchase or similar option or to cause either Company, any Obligor, any such guarantor or any other Person to honor any redemption or mandatory prepayment obligation under any Subordinated Document or (e) to take any action under the provisions of any state or federal law, including the UCC, or under any contract or agreement, to enforce, foreclose upon, take possession of or sell any Company Property or any property or assets of any such guarantor or any other Person.

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"Subordinated Lender" shall have the meaning set forth in the preamble hereof.

"Subordinated Note(s)" shall have the meaning set forth in the recitals hereof.

"UCC" means Article 9 of the Uniform Commercial Code, as in effect in any relevant jurisdiction.

2. Subordination of Subordinated Indebtedness to Senior Indebtedness. Each Company covenants and agrees, and the Subordinated Lender by its acceptance of the Subordinated Documents (whether upon original issue or upon transfer or assignment) likewise covenants and agrees, notwithstanding anything to the contrary contained in any of the Subordinated Documents, that the payment of any and all of the Subordinated Indebtedness shall be subordinate and subject in right and time of payment, to the extent and in the manner hereinafter set forth, to the Final Payment of all Senior Indebtedness; provided that the foregoing shall in no way limit the ability of each company to pay the amounts detailed in the proviso to Section 6 below. Each holder of Senior Indebtedness, whether now outstanding or hereafter created, incurred, assumed or guaranteed, shall be deemed to have acquired Senior Indebtedness in reliance upon the provisions contained in this Agreement.

3. Subordination of Liens.

(a) The Subordinated Lender hereby covenants and agrees that any Liens and rights of any kind the Subordinated Lender may now have and hereafter acquire (or be deemed to now have or hereafter acquire) against either Company or any Obligor and/or any Company Property, if any, shall be subordinate and subject to the Liens and rights against either Company, Obligors and/or Company Property of the Senior Lenders arising from or out of the Senior Indebtedness, regardless of the order, time or manner in which any Liens attach to or are perfected in any Company Property.

(b) If (x) either Company or any Obligor, as the case may be, desires to make any distribution or payment or to sell any Company Property as to which the Senior Lenders have provided their written consent or which is otherwise permitted under the Senior Loan Documents or (y) the Senior Lenders release their Lien in connection with any sale or disposition of any Company Property, the Subordinated Lender shall be deemed to have consented to such disposition and shall execute such releases with respect to such Company Property to be sold as the Senior Agent or the Senior Lenders request to evidence the release of any Lien against such property the Subordinated Lender may have or be deemed to have. The Subordinated Lender hereby irrevocably appoints the holders of the Senior Indebtedness, or the Senior Agent on their behalf, as the true and lawful attorneys of the Subordinated Lender for the purpose of executing and filing any such releases. The Subordinated Lender hereby waives any rights the Subordinated Lender has or may have in the future to object to the appointment of a receiver for all or any portion of the equity or the assets of either Company or any Obligor or to require any Senior Lender to marshal the collateral and agrees that each Senior Lender may proceed against the collateral in any order that it deems appropriate in the exercise of its absolute discretion.

4. Warranties and Representations of Companies and Subordinated Lender.

(a) Each Company and the Subordinated Lender hereby severally represent and warrant to the Senior Lenders that each Senior Lender has been furnished with a true and correct copy of all instruments and securities in existence as of the date hereof evidencing or pertaining to the Subordinated Indebtedness.

(b) Each Company hereby represents and warrants to the Senior Lenders that this Agreement has been duly executed and delivered by each Company and constitutes a legal, valid and binding obligation of each Company enforceable in accordance with its terms except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect affecting generally the enforcement of creditors' rights and remedies and general principles of equity.

(c) The Subordinated Lender represents and warrants to the Senior Lenders: (i) that this Agreement has been duly executed and delivered by the Subordinated Lender and constitutes a legal, valid and binding obligation of the Subordinated Lender enforceable against the Subordinated Lender in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect affecting generally the enforcement of creditors' rights and remedies and general principles of equity; (ii) that the Subordinated Lender has not relied and shall not rely on any representation or information of any nature made by or received from any Senior Lender relative to either Company or any Obligor in deciding to execute this Agreement or to permit it to continue in effect; and (iii) that the Subordinated Lender is the current holder of the Subordinated Indebtedness.

(d) Notwithstanding anything contained in this Agreement to the contrary, the Subordinated Lender hereby represents and warrants to the Senior Agent and each Company that the Subordinated Lender has no security interest in or Lien on any assets of either Company or any Obligor or any Company Property.

5. Negative Covenants. Until all of the Senior Indebtedness has been Finally Paid: (A) the Subordinated Lender shall not demand, accept or acquire from either Company or any Obligor any security interest in or Lien on any assets of either Company or any Obligor or any Company Property, nor any collateral from either Company or any Obligor; (B) neither Company shall discharge the Subordinated Indebtedness other than in accordance with the terms of the Subordinated Documents; (C) the Subordinated Lender shall not demand or accept from either Company, any Obligor or other Person any consideration which would result in a discharge of the Subordinated Indebtedness; (D) the Subordinated Lender shall not hereafter give any subordination in respect of the Subordinated Indebtedness; and (E) neither Company shall hereafter issue any instrument, security or other writing evidencing any part of the Subordinated Indebtedness, and the Subordinated Lender shall not receive any such writing, except upon the condition that such security shall bear the legend referred to in Section 25 below and a true copy thereof shall be thereupon promptly furnished to the Senior Agent.

6. Permitted Payments. Notwithstanding the terms of the Subordinated Documents, each Company hereby agrees that it shall not make (and will not permit any other Obligor to make), and the Subordinated Lender hereby agrees that it will not accept, any payment or

distribution with respect to the Subordinated Indebtedness including any payment or distribution received through the exercise of any right of setoff, counterclaim or crossclaim, until the Senior Indebtedness is Finally Paid; provided that the Companies may make to the Subordinated Lender and the Subordinated Lender may accept (i) payments in kind (but not in cash) in respect of interest on the Subordinated Indebtedness, all on a non-accelerated basis and in accordance with the terms of the Subordinated Documents, (ii) reimbursement of all costs and expenses incurred by the Subordinated Lender in connection with the negotiation, execution, delivery and preparation the Kapoor Guaranty and the Related Agreements to which it is a party and the consummation of the transactions contemplated thereby and (iii) reimbursement of the costs of issuance of the unconditional standby letter of credit delivered to the Senior Agent by the Subordinated Lender pursuant to the Kapoor Guaranty; provided, that reimbursements pursuant to clauses (ii) and (iii) shall not exceed \$140,000 in the aggregate during the term of this Agreement.

7. Forbearance of Legal Remedies.

(a) Until the Senior Indebtedness is Finally Paid, the Subordinated Lender shall not, without the prior written consent of the Senior Agent, exercise any Subordinated Lender Remedies.

(b) Notwithstanding anything contained herein to the contrary or any rights or remedies available to the Subordinated Lender under any of the Subordinated Documents, applicable law or otherwise, prior to the time that the Senior Indebtedness has been Finally Paid, any payments, distributions or other proceeds obtained by the Subordinated Lender from the exercise of any Subordinated Lender Remedies shall in any event be held in trust by it for the benefit of the Senior Agent and the Senior Lenders and promptly paid or delivered to the Senior Agent for the benefit of the Senior Lenders in the form received.

8. Dissolution, Liquidation, Reorganization or Bankruptcy. (a) In the event of any Proceeding involving either Company or any Obligor:

(i) all Senior Indebtedness shall be Finally Paid before the Subordinated Lender shall be entitled to receive any payment on account of any Subordinated Indebtedness; and

(ii) any payment or distribution of assets of such Person of any kind or character, whether in cash, property or securities, to which the Subordinated Lender would be entitled except for these provisions, shall be paid by the liquidating trustee or agent or other Person making such payment or distribution directly to the Senior Agent, to the extent necessary to make Final Payment of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution or provision therefor to the holders of such Senior Indebtedness. The Subordinated Lender irrevocably authorizes, empowers and directs any debtor, debtor-in-possession, receiver, trustee or agent or other person having authority, to pay or otherwise deliver all such payments or distributions to Senior Agent.

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(b) Until the Senior Indebtedness has been Finally Paid, if a Proceeding shall occur and be continuing, the Subordinated Lender shall file all claims it may have against either Company or any Obligor, and shall direct the debtor in possession or trustee in bankruptcy, as appropriate, to pay over to the Senior Agent all amounts due to the Subordinated Lender on account of the Subordinated Indebtedness until the Senior Indebtedness has been Finally Paid. If the Subordinated Lender fails to file such claims or to vote such claims prior to 30 days before the expiration of time to do so, the Senior Agent may (but shall have no obligation to) file and/or vote such claims in the Subordinated Lender's name on behalf of the Senior Lenders. If the Senior Agent votes any such claim in accordance with the authority granted hereof, the Subordinated Lender shall not be entitled to withdraw or change such vote.

(c) The Subordinated Lender agrees, in connection with any such Proceeding, that while it shall retain the right to vote and otherwise act in any such proceeding (including the right to vote to accept or reject any plan of partial or complete liquidation, reorganization, arrangement, composition or extension), it will not take any action or vote in any way so as to (i) contest the validity of the Liens securing the Senior Indebtedness, (ii) contest the enforceability of any of the Senior Loan Documents, (iii) contest the Senior Lenders' priority position over the Subordinated Lender created by this Agreement or (iv) take any position or action which would have directly or indirectly any of the following effects: (A) extension of the final maturity of and/or forgiveness, reduction or cram-down of the Senior Indebtedness or deferral of any required payment in respect of Senior Indebtedness, (B) opposing or objecting to initiatives or claims by the Senior Lenders for adequate protection or relief from the automatic stay, use of cash collateral or super-priority expense of administration for failure of adequate protection, (C) challenging in any respect treatment of the Senior Indebtedness as a first priority perfected fully secured claim, (D) blocking current payment of any obligation in respect of Senior Indebtedness, (E) assenting to or supporting any requested extension of the exclusivity period for the submission by Company of any plan of reorganization or liquidation under the Bankruptcy Code unless such extension is assented to or supported by the Senior Lenders; and (F) opposing or objecting to any sale or lease of any Company Property that has been consented to by the holders of Senior Indebtedness. In the event of any violation of any provisions of this section by the Subordinated Lender, the Senior Lenders may in

the name of the Subordinated Lender, or in their own name thereafter amend, modify or rescind any such prior act taken or vote issued, in violation of this Agreement.

(d) Until the Senior Indebtedness has been Finally Paid, if a Proceeding shall occur and be continuing, the Subordinated Lender hereby (i) expressly consents to any Senior Lender's providing post-petition financing to either Company or any Obligor or the granting by either Company or any Obligor to any Senior Lender of senior liens and priorities in connection therewith and/or the use of cash collateral and (ii) agrees that adequate notice of such financing or cash collateral usage to the Subordinated Lender shall have been provided if the Subordinated Lender received notice in accordance with Section 16 hereof 2 Business Days prior to the entry of any order approving such financing or cash collateral usage.

(e) If the Subordinated Lender has or at any time acquires any security interest or Lien for the Subordinated Indebtedness, the Subordinated Lender agrees not (i) to initiate any proceeding involving the marshalling of any Company Property (whether in a Proceeding or

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otherwise) or (ii) to assert any right it may have to "adequate protection" of its interest, if any, in such security in any Proceeding and agrees that it will not seek to have the automatic stay lifted with respect to such security, in each case without the prior written consent of the Senior Agent (not to be unreasonably withheld or delayed). The Subordinated Lender waives any claim or defense the Subordinated Lender may now or hereafter have arising out of the election by any Senior Lender in any Proceeding instituted under Chapter 11 of the Bankruptcy Code of any use of cash collateral, any borrowing or any grant of a security interest under Sections 363 and/or 364 of the Bankruptcy Code by either Company or any Obligor, as debtor-in-possession. The Subordinated Lender agrees that it will not object to or oppose a sale or other disposition of any property securing all or any part of the Senior Indebtedness free and clear of any security interests or other Liens or other claims of the Subordinated Lender under Section 363 of the Bankruptcy Code if the Senior Agent has consented to such sale or disposition. The Subordinated Lender further agrees that it will not seek to participate on any creditors committee without the Senior Agent's prior written consent. To the extent that any Senior Lender receives payments on, or proceeds of collateral for, the Senior Indebtedness which are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law, or equitable cause, then as between such Senior Lender and the Subordinated Lender hereunder, to the extent of such payment or proceeds received, the Senior Indebtedness, or part thereof, intended to be satisfied shall be revived and continue in full force and effect as if such payments or proceeds had not been received by such Senior Lender.

9. Obligation of Company Unconditional. Nothing contained herein or in the Senior Loan Documents is intended to or shall impair, as between either Company and the Subordinated Lender only, the obligation of the Companies, which is absolute and unconditional, to pay to the Subordinated Lender the Subordinated Indebtedness as and when the same shall become due and payable in accordance with their terms, or to affect the relative rights of the Subordinated Lender and creditors of the Companies other than the Senior Lenders.

10. Subordination Rights Not Impaired by Acts or Omissions of either Company or Holders of Senior Indebtedness.

(a) No right of any present or future holders of any Senior Indebtedness to enforce the subordination provisions as provided herein shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of either Company; by any act or failure to act by any such holder; by any act or failure to act by any other holder of the Senior Indebtedness; or by any noncompliance by either Company with the terms hereof, regardless of any knowledge thereof which any such holder may have or be otherwise charged with. The Subordinated Lender shall not be released, nor shall the Subordinated Lender's obligation hereunder be in anyway diminished, by any of the following: (i) the exercise or the failure to exercise by any Senior Lender of any rights or remedies conferred on it or them under the Senior Loan Documents, hereunder or existing at law or otherwise, or against any Company Property; (ii) the commencement of an action at law or the recovery of a judgment at law against either Company or any Obligor for the performance of the Senior Indebtedness and the enforcement thereof through levy or execution or otherwise; (iii) the taking

or institution or any other action or proceeding against either Company or any Obligor; (iv) any delay in taking, pursuing, or

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exercising any of the foregoing actions, rights, powers, or remedies (even though requested by the Subordinated Lender) by any Senior Lender or anyone acting for any Senior Lender; (v) any lack of validity or enforceability of any Senior Loan Document; (vi) the release or non-perfection of any collateral securing the Senior Indebtedness; or (vii) any other circumstance which might otherwise constitute a defense available to, or a discharge of, either Company or any Obligor in respect of the Senior Indebtedness or Subordinated Lender in respect of this Agreement (other than the Final Payment of the Senior Indebtedness).

(b) Without limiting the generality of the foregoing, and anything else contained herein to the contrary notwithstanding, any Senior Lender, from time to time, without prior notice to or the consent of the Subordinated Lender, may take all or any of the following actions without in any manner affecting or impairing the obligation or liability of the Subordinated Lender hereunder: (i) obtain a Lien in any property to secure any of the Senior Indebtedness; (ii) obtain the primary and secondary liability of any party or parties with respect to any of the Senior Indebtedness; (iii) renew, extend, or otherwise change the time for payment of the Senior Indebtedness or any installment thereof for any period, or change the interest rates and fees with respect to the Senior Indebtedness; (iv) renew, reaffirm, extend, release or otherwise change any liability of any nature of any person or entity, including any Obligor, with respect to the Senior Indebtedness; (v) exchange, enforce, waive, release, and apply any Company Property and direct the order or manner of sale thereof as such Senior Lender may in its discretion determine; (vi) enforce its rights hereunder, whether or not such Senior Lender shall proceed against any other Person; (vii) exercise its rights to consent to any action or non-action of either Company or any Obligor which may violate the covenants and agreements contained in the Senior Loan Documents, with or without consideration, on such terms and conditions as may be acceptable to it; or (viii) exercise any of its rights conferred by the Senior Loan Documents or by law.

11. Waivers. Each Company and the Subordinated Lender hereby waive, to the fullest extent permitted by law, any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy of specific performance of this Agreement in any action brought therefor by the Senior Lenders. To the fullest extent permitted by law and except as to any notices specified in this Agreement, notices regarding the intended sale or disposition of any portion of the collateral held by the Senior Lenders, or any notice which may not be waived in accordance with the UCC, each Company and the Subordinated Lender hereby further waive: (a) presentment, demand, protest, notice of protest, notice of default or dishonor, notice of payment or nonpayment and any and all other notices and demands of any kind in connection with all negotiable instruments evidencing all or any portion of the Senior Indebtedness or the Subordinated Indebtedness to which the Companies or the Subordinated Lender may be a party; (b) prior notice of and consent to any loans made, extensions granted or other action taken in reliance thereon; and (c) all other demands and notices of every kind in connection with this Agreement, the Senior Indebtedness or the Subordinated Indebtedness. The Subordinated Lender consents to any release, renewal, extension, compromise or postponement of the time of payment of the Senior Indebtedness, to any substitution, exchange or release of collateral therefor, and to the addition or release of any person primarily or secondarily liable thereon.

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12. No Estoppel. Neither the failure nor any delay on the part of any Senior Lender to exercise any right, remedy, power or privilege hereunder shall operate as a waiver thereof or give rise to an estoppel, nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then only to the extent specifically stated in such writing.

13. Incorrect Payments; Specific Performance. If either Company or any Obligor shall make or the Subordinated Lender shall collect any payment on



account of the principal of, premium or interest on or any other amounts due under the Subordinated Indebtedness in contravention of this Agreement, such payments shall be held in trust by the Subordinated Lender and not commingled with any assets of the Subordinated Lender and shall be paid over and delivered to the Senior Agent, for the benefit of the Senior Lenders, promptly upon receipt thereof. At any time the Subordinated Lender fails to comply with any provision of this Agreement, the Senior Lenders may demand specific performance of this Agreement, whether or not either Company has complied with this Agreement, and may exercise any other remedy available at law or equity.

14. Amendment of the Subordinated Documents and Senior Loan Documents. The Subordinated Lender agrees that it will not, without the prior written consent of the Senior Agent, agree to any amendment, modification, waiver or supplement to the Subordinated Documents. The Senior Indebtedness may at any time be amended, extended, modified, restated, refinanced or waived without limitation, without notice to, or the consent of, the Subordinated Lender.

15. Inconsistent or Conflicting Provisions; Construction. If a provision of the Senior Loan Documents or the Subordinated Documents is inconsistent or conflicts with the provisions of this Agreement, the provisions of this Agreement shall govern and prevail. The term "including" is not limiting and means "including without limitation." In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including."

16. Notices. Any notice, consent or other communication provided for in this Agreement shall be in writing and shall be delivered personally (effective upon delivery), via facsimile (effective upon confirmation of transmission), via overnight courier (effective the next Business Day after dispatch if instructed to deliver on next business day) or via U.S. Mail (effective 3 days after mailing, postage prepaid, first class) to each party at its address(es) and/or facsimile number(s) set forth on Annex I hereto, or to such other address as either party shall specify to the other in writing from time to time. The Subordinated Lender shall provide the Senior Agent with written notice promptly upon the occurrence of an event of default under the Subordinated Documents.

17. Entire Agreement. This Agreement constitutes and expresses the entire understanding between the parties hereto with respect to the subject matter hereof, and

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supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, whether express or implied, oral or written. Neither this Agreement nor any portion or provision hereof may be changed, waived or amended orally or in any manner other than by an agreement in writing signed by the Senior Agent and the Subordinated Lender; provided that any such change, waiver or amendment shall be binding upon each Company by their written consent thereto. This Agreement shall constitute a Loan Document and the recitals hereto shall constitute part of this Agreement.

18. Additional Documentation. Each Company and the Subordinated Lender shall execute and deliver to the Senior Agent such further instruments and shall take such further action (in each case, at the cost of the Companies) as the Senior Agent may at any time or times reasonably request in order to carry out the provisions and intent of this Agreement.

19. Expenses. The Companies, joint and severally, agree to pay the Senior Agent and the Senior Lenders on demand all expenses of every kind, including Attorney Costs, that the Senior Agent or the Senior Lenders incur in enforcing any of their rights against either Company and/or the Subordinated Lender under this Agreement.

20. Successors and Assigns.

(a) This Agreement shall inure to the benefit of each Senior Lender, the Subordinated Lender, and their respective successors and assigns, and shall be binding upon each Company and its successors and assigns, and each Senior Lender, the Subordinated Lender and their respective transferees, successors and assigns, including any subsequent holders of the Subordinated Notes. Any Senior Lender, without prior notice or consent of any kind, may sell, assign or transfer any Senior Indebtedness, and in such event each and every immediate and successive assignee or transferee thereof may be given the right by such Person

to enforce this Agreement in full against each Company and the Subordinated Lender, by suit or otherwise, for its own benefit.

(b) The Subordinated Lender shall not sell, assign, pledge, dispose of or otherwise transfer all or any portion of the Subordinated Indebtedness or any Subordinated Document without the prior written consent of the Senior Agent which consent shall not be unreasonably withheld or delayed.

(c) Notwithstanding the failure of any transferee to execute or deliver an agreement substantially identical to this Agreement, the subordination effected hereby shall survive any sale, assignment, pledge, disposition or other transfer of all or any portion of the Subordinated Indebtedness, and the terms of this Agreement shall be binding upon the successors and assigns of each Subordinated Indebtedness, as provided in this Section 20.

(d) The Subordinated Lender hereby agrees that any party that refinances the Senior Indebtedness of the Senior Lenders may rely on and enforce this Agreement as if it were such Senior Lender. The Subordinated Lender further hereby agrees that it will, at the request of such Senior Lender, enter into an agreement, in the form of this Agreement, mutatis mutandis, to subordinate the Subordinated Indebtedness, to the same extent as provided herein, to the party

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refinancing all or a portion of such Senior Indebtedness; provided that the failure of the Subordinated Lender to execute such an agreement shall not affect such party's right to rely on and enforce the terms of this Agreement.

21. Covenant Not to Challenge. This Agreement has been negotiated by the parties with the expectation and in reliance upon the assumption that the instruments and documents evidencing the Senior Indebtedness are valid and enforceable. In determining whether to enter into this Agreement, the Subordinated Lender has assumed such validity and enforceability, and has agreed to the provisions contained herein, without relying upon any reservation of a right to challenge or call into question such validity or enforceability. As between any Senior Lender and the Subordinated Lender, the Subordinated Lender hereby covenants and agrees, to the fullest extent permitted by law, that it shall not initiate in any proceeding a challenge to the validity or enforceability of the documents and instruments evidencing the Senior Indebtedness or the validity, perfection or priority of any Lien of the Senior Agent or the Senior Lenders securing the Senior Indebtedness, nor shall the Subordinated Lender instigate other parties to raise any such challenges, nor shall the Subordinated Lender participate in or otherwise assert any such challenges which are raised by other parties.

22. Subrogation. Subject to the Final Payment of all Senior Indebtedness and the provisions of Section 24 hereof, the Subordinated Lender shall be subrogated to the rights of the Senior Lenders to receive payments and distributions of cash, property and securities applicable to the Senior Indebtedness to the extent that distributions otherwise payable to the Subordinated Lender have been applied to the Senior Indebtedness, until all amounts payable under the Subordinated Indebtedness shall have been paid in full. For purposes of such subrogation, no payments or distributions to the Senior Lenders of any cash, property or securities to which the Subordinated Lender would be entitled except for the provisions of this Agreement, and no payment pursuant to the provisions of this Agreement to the Senior Lenders by the Subordinated Lender shall, as among the Companies and their creditors other than the Senior Lenders, be deemed to be a payment or distribution by either Company to or on account of the Senior Indebtedness. If either Company fails to make any payment on account of the Subordinated Indebtedness by reason of any provision contained herein, such failure shall, notwithstanding such provision contained herein, constitute a default with respect to the Subordinated Indebtedness if and to the extent such failure would otherwise constitute such a default in accordance with the terms of the Subordinated Indebtedness.

23. Termination of Agreement. This Agreement shall continue and shall be irrevocable until the date all of the Senior Indebtedness has been Finally Paid or otherwise discharged and released in an express writing to such effect by the Senior Lenders.

24. Reinstatement. The obligations of the Subordinated Lender under the Agreement shall continue to be effective, or be reinstated, as the case may be, if at any time any payment in respect of any Senior Indebtedness is rescinded or

must otherwise be restored or returned by any Senior Lender by reason of any bankruptcy, reorganization, arrangement, composition or similar proceeding or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, either Company, any Obligor or any substantial part of its property, or otherwise, all as though such payment had not been made.

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25. Legends. Until the termination of this Agreement, the Subordinated Lender will cause to be clearly, conspicuously and prominently inserted (or otherwise attached thereto) on the face of each Subordinated Note and any other Subordinated Document, as well as any renewals or replacements thereof, the following legend:

"THIS INSTRUMENT AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN THAT CERTAIN SUBORDINATION AND INTERCREDITOR AGREEMENT (THE "SUBORDINATION AGREEMENT") DATED AS OF OCTOBER 7, 2003 AMONG THE JOHN N. KAPOOR TRUST DATED SEPTEMBER 20, 1989, AKORN, INC., A LOUISIANA CORPORATION ("AKORN"), AND AKORN (NEW JERSEY), INC., AN ILLINOIS CORPORATION ("AKORN NJ"; TOGETHER WITH AKORN, EACH A "COMPANY" AND COLLECTIVELY THE "COMPANIES") AND LASALLE BANK NATIONAL ASSOCIATION (TOGETHER WITH ITS SUCCESSORS AND ASSIGNS, THE "SENIOR AGENT"), TO THE INDEBTEDNESS (INCLUDING INTEREST) OWED BY THE COMPANIES PURSUANT TO THAT CERTAIN CREDIT AGREEMENT DATED AS OF OCTOBER 7, 2003 AMONG THE COMPANIES, THE SENIOR AGENT AND THE LENDERS FROM TIME TO TIME PARTY THERETO, AND THE OTHER LOAN DOCUMENTS (AS DEFINED IN THE CREDIT AGREEMENT) AS SUCH CREDIT AGREEMENT AND OTHER LOAN DOCUMENTS MAY BE AMENDED, RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME AND TO INDEBTEDNESS REFINANCING THE INDEBTEDNESS THEREUNDER AS CONTEMPLATED BY THE SUBORDINATION AGREEMENT; AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE SUBORDINATION AGREEMENT."

Each Company's relevant books shall be marked to evidence the subordination of all of the Subordinated Indebtedness to the holders of Senior Indebtedness, in accordance with the terms of this Agreement. Each Senior Lender is authorized to examine such books from time to time in accordance with the terms of the Credit Agreement and to make any notations required by this Agreement.

26. Governing Law. THIS AGREEMENT SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF ILLINOIS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES. EACH COMPANY AND THE SUBORDINATED LENDER HEREBY AGREE THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY EACH COMPANY OR THE SUBORDINATED LENDER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT SHALL BE LITIGATED IN A COOK COUNTY, ILLINOIS COURT OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR,

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IF ANY SENIOR LENDER INITIATES SUCH ACTION, IN ADDITION TO THE FOREGOING COURTS, ANY COURT IN WHICH SUCH SENIOR LENDER SHALL INITIATE SUCH ACTION, TO THE EXTENT SUCH COURT HAS JURISDICTION. EACH COMPANY AND THE SUBORDINATED LENDER HEREBY EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY ANY SENIOR LENDER AND HEREBY WAIVE ANY CLAIM THAT SUCH COURTS ARE AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED UPON LACK OF VENUE. THE EXCLUSIVE CHOICE OF FORUM AS SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY ANY SENIOR LENDER, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY ANY SENIOR LENDER, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND EACH COMPANY AND THE SUBORDINATED LENDER HEREBY WAIVE THE RIGHT TO COLLATERALLY ATTACK SUCH JUDGMENT OR ACTION.

27. Jury Trial. THE SENIOR AGENT, THE SUBORDINATED LENDER AND EACH COMPANY WAIVE TRIAL BY JURY IN ANY DISPUTE ARISING FROM, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

28. Severability. The provisions of this Agreement are independent of and separable from each other. If any provision hereof shall for any reason be held

invalid or unenforceable, it is the intent of the parties that such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof, and that this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

29. Counterparts. This Agreement may be executed in any number of separate counterparts, all of which, when taken together, shall constitute one and the same instrument, notwithstanding the fact that all parties did not sign the same counterpart. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof.

30. Sections. The section headings used in this Agreement are for convenience only and shall not affect the interpretation of any of the provisions hereof.

31. Defines Rights of Creditors. The provisions of this Agreement are solely for the purpose of defining the relative rights of the Senior Lenders and the Subordinated Lender and shall not be deemed to create any rights or priorities in favor of any other Person, including each Company.

[signature pages follow]

The parties hereto have executed this Agreement as of the date first above written.

COMPANIES:

AKORN, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AKORN (NEW JERSEY), INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SENIOR AGENT:

LASALLE BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SUBORDINATED LENDER:

THE JOHN N. KAPOOR TRUST dtd 9/20/89

-----  
Name: John N. Kapoor  
Title: Trustee

ANNEX I

NOTICE ADDRESSES

COMPANIES:

c/o Akorn, Inc.  
2500 Milbrook Drive  
Buffalo Grove, Illinois 60089  
Attention: Chief Financial Officer  
Facsimile: (847) 279-6123

SENIOR AGENT:

LaSalle Bank National Association  
135 South LaSalle Street  
Chicago, Illinois 60603  
Attention: Patrick O'Toole  
Facsimile: (312) 904-0522

SUBORDINATED LENDER:

The John N. Kapoor Trust  
c/o Dr. John Kapoor  
225 E. Deerpath Road  
Suite 250  
Lake Forest, Illinois 60045  
Facsimile: (847) 279-6123

SUBORDINATION AND INTERCREDITOR AGREEMENT  
(LaSalle Bank National Association/John N. Kapoor Trust)

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT dated as of October 7, 2003 (as amended, supplemented or otherwise modified from time to time, this "Agreement") is entered into among AKORN, INC., a Louisiana corporation ("Akorn"), AKORN (NEW JERSEY), INC., an Illinois corporation ("Akorn NJ"; together with Akorn, each a "Company" and collectively, the "Companies"), LASALLE BANK NATIONAL ASSOCIATION, as Senior Agent (as hereinafter defined) for Senior Lenders under the Credit Agreement (as hereinafter defined), and THE JOHN N. KAPOOR TRUST dated September 20, 1989 (the "Subordinated Lender").

RECITALS

A. The Senior Agent, certain financial institutions (together with the successors and assigns thereof, "Senior Lenders") and the Companies have entered into a Credit Agreement, dated as of the date hereof (as from time to time amended, modified, extended, renewed, refinanced, or restated, the "Credit Agreement"), together with the other Loan Documents (as defined in the Credit Agreement), whereby the Senior Lenders have made and shall make available to each of the Companies certain loans and other financial accommodations therein set forth. All of the Companies' obligations under the Senior Loan Documents (as hereinafter defined) are secured by assignments of and security interests in substantially all of the now or hereafter acquired assets of the Companies and their Subsidiaries, all as more fully set forth in the Loan Documents.

B. Akorn has issued Subordinated Promissory Note of even date herewith in the principal amount of \$2,117,139.03 (the "Subordinated Note", together with all guarantees and other documents or instruments executed in connection therewith (as from time to time modified, extended, renewed, refinanced or restated to the extent permitted by the terms of this Agreement, collectively the "Subordinated Documents")) in favor of the Subordinated Lender.

C. As a condition of the financing accommodations under the Loan Documents, the parties hereto are required to enter into this Agreement to establish the relative rights and priorities of the Senior Agent, the Senior Lenders and the Subordinated Lender under the Senior Loan Documents and the Subordinated Documents.

D. The Subordinated Lender will benefit from the financing accommodations made by the Senior Lenders under the Credit Agreement and the other Loan Documents. The Subordinated Lender and the Companies desire to enter into this Agreement in order to induce the Senior Lenders to enter into the Credit Agreement. The Subordinated Lender acknowledges that the Senior Lenders would not enter into the Senior Loan Documents but for the execution of this Agreement.

In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. Definitions. Except as otherwise provided herein, all capitalized terms used in this Agreement shall have the meanings ascribed to such terms in the Credit Agreement, provided that the following terms shall have the meanings set forth below:

"Bankruptcy Code" means Title 11 of the United States Code (11 U.S.C. Section 101 et. seq.) or any replacement or supplemental federal statute dealing with the bankruptcy of debtors.

"Company" and "Companies" shall have the meaning set forth in the preamble hereof.

"Company Property" means all assets, property and property rights, of any kind or nature, tangible or intangible, now or hereafter existing, in which either Company or any Obligor owns, asserts or maintains an interest.

"Credit Agreement" shall have the meaning set forth in the recitals hereof.

"Finally Paid" or "Final Payment," when used in connection with the Senior Indebtedness, means the full and indefeasible payment in cash of all of

the Senior Indebtedness and the irrevocable termination of all Commitments of all the Senior Lenders under the Senior Loan Documents.

"Liens" means any mortgage, deed of trust, pledge, lien, security interest, charge, set-off right or other encumbrance, whether now existing or hereafter created, acquired or arising.

"Obligor" means any guarantor or obligor of any Senior Indebtedness.

"Proceeding" means any voluntary or involuntary proceeding commenced by or against either Company or any Obligor under any provision of the Bankruptcy Code, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with its creditors, or proceedings seeking dissolution, receivership, reorganization, arrangement, or other similar relief.

"Senior Agent" means LaSalle Bank National Association, as Administrative Agent for Senior Lenders, or any other Person appointed by the holders of the Senior Indebtedness as administrative agent for purposes of the Senior Loan Documents and this Agreement, together with the successors and assigns of all of the foregoing.

"Senior Indebtedness" means all obligations, liabilities and indebtedness of every nature of either Company or any Obligor from time to time owed to the Senior Agent or any Senior Lender under the Senior Loan Documents, including the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all premium, fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable, whether before or after the filing of a Proceeding,

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including any Hedging Obligations and Bank Product Obligations at any time due and owing to any Senior Lender, together with (a) any indebtedness which refinances such principal, interest or other obligations and any amendments, modifications, renewals, restatements, refinancings or extensions thereof and (b) any interest accruing thereon after the commencement of a Proceeding, without regard to whether or not such interest is allowed in any Proceeding. Senior Indebtedness shall be deemed to be outstanding until it is Finally Paid.

"Senior Loan Documents" means the Credit Agreement, the other Loan Documents and all other agreements, documents and instruments executed from time to time in connection therewith, in each case as from time to time renewed, extended, amended, restated or modified and all agreements and instruments evidencing full or partial refundings or refinancings of the indebtedness thereunder.

"Subordinated Indebtedness" means all obligations, liabilities and indebtedness of every nature of either Company or any Obligor from time to time owed to the Subordinated Lender under the Subordinated Documents, including the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all premium, fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable under or in respect of the Subordinated Documents, whether before or after the filing of a Proceeding (including any amounts payable by either Company or any Obligor in connection with put, redemption, repurchase or repurchase rights under any warrants or any Capital Securities of either Company or any Obligor held by the Subordinated Lender), together with (a) any amendments, modifications, renewals, restatements, refinancings or extensions thereof and (b) any interest accruing thereon after the commencement of a Proceeding, without regard to whether or not such interest is allowed in any Proceeding.

"Subordinated Lender Remedies" means any action (a) to take from or for the account of either Company, any Obligor, any other guarantor of the Subordinated Indebtedness or any other Person, by set-off or in any other manner, the whole or any part of any moneys which may now or hereafter be owing by either Company (other than receipt of payments of Subordinated Indebtedness to the extent permitted by this Agreement), any Obligor, any such guarantor or any other Person with respect to the Subordinated Indebtedness, (b) to sue for payment of, or to initiate or participate with others in any suit, action or proceeding (including any Proceeding) against either Company, any Obligor, any such guarantor or any other Person to (i) enforce payment of or to collect the

whole or any part of the Subordinated Indebtedness or (ii) commence judicial enforcement of any of the rights and remedies under the Subordinated Documents or applicable law with respect to the Subordinated Indebtedness, (c) to accelerate the Subordinated Indebtedness, (d) to exercise any put, repurchase or similar option or to cause either Company, any Obligor, any such guarantor or any other Person to honor any redemption or mandatory prepayment obligation under any Subordinated Document or (e) to take any action under the provisions of any state or federal law, including the UCC, or under any contract or agreement, to enforce, foreclose upon, take possession of or sell any Company Property or any property or assets of any such guarantor or any other Person.

"Subordinated Lender" shall have the meaning set forth in the preamble hereof.

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"Subordinated Note" shall have the meaning set forth in the recitals hereof.

"UCC" means Article 9 of the Uniform Commercial Code, as in effect in any relevant jurisdiction.

2. Subordination of Subordinated Indebtedness to Senior Indebtedness. Each Company covenants and agrees, and the Subordinated Lender by its acceptance of the Subordinated Documents (whether upon original issue or upon transfer or assignment) likewise covenants and agrees, notwithstanding anything to the contrary contained in any of the Subordinated Documents, that the payment of any and all of the Subordinated Indebtedness shall be subordinate and subject in right and time of payment, to the extent and in the manner hereinafter set forth, to the Final Payment of all Senior Indebtedness; provided that the foregoing shall in no way limit the ability of each company to pay the amounts detailed in the proviso to Section 6 below. Each holder of Senior Indebtedness, whether now outstanding or hereafter created, incurred, assumed or guaranteed, shall be deemed to have acquired Senior Indebtedness in reliance upon the provisions contained in this Agreement.

### 3. Subordination of Liens.

(a) The Subordinated Lender hereby covenants and agrees that any Liens and rights of any kind the Subordinated Lender may now have and hereafter acquire (or be deemed to now have or hereafter acquire) against either Company or any Obligor and/or any Company Property, if any, shall be subordinate and subject to the Liens and rights against either Company, Obligors and/or Company Property of the Senior Lenders arising from or out of the Senior Indebtedness, regardless of the order, time or manner in which any Liens attach to or are perfected in any Company Property.

(b) If (x) either Company or any Obligor, as the case may be, desires to make any distribution or payment or to sell any Company Property as to which the Senior Lenders have provided their written consent or which is otherwise permitted under the Senior Loan Documents or (y) the Senior Lenders release their Lien in connection with any sale or disposition of any Company Property, the Subordinated Lender shall be deemed to have consented to such disposition and shall execute such releases with respect to such Company Property to be sold as the Senior Agent or the Senior Lenders request to evidence the release of any Lien against such property the Subordinated Lender may have or be deemed to have. The Subordinated Lender hereby irrevocably appoints the holders of the Senior Indebtedness, or the Senior Agent on their behalf, as the true and lawful attorneys of the Subordinated Lender for the purpose of executing and filing any such releases. The Subordinated Lender hereby waives any rights the Subordinated Lender has or may have in the future to object to the appointment of a receiver for all or any portion of the equity or the assets of either Company or any Obligor or to require any Senior Lender to marshal the collateral and agrees that each Senior Lender may proceed against the collateral in any order that it deems appropriate in the exercise of its absolute discretion.

### 4. Warranties and Representations of Companies and Subordinated Lender.

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(a) Each Company and the Subordinated Lender hereby severally



represent and warrant to the Senior Lenders that each Senior Lender has been furnished with a true and correct copy of all instruments and securities in existence as of the date hereof evidencing or pertaining to the Subordinated Indebtedness.

(b) Each Company hereby represents and warrants to the Senior Lenders that this Agreement has been duly executed and delivered by each Company and constitutes a legal, valid and binding obligation of each Company enforceable in accordance with its terms except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect affecting generally the enforcement of creditors' rights and remedies and general principles of equity.

(c) The Subordinated Lender represents and warrants to the Senior Lenders: (i) that this Agreement has been duly executed and delivered by the Subordinated Lender and constitutes a legal, valid and binding obligation of the Subordinated Lender enforceable against the Subordinated Lender in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect affecting generally the enforcement of creditors' rights and remedies and general principles of equity; (ii) that the Subordinated Lender has not relied and shall not rely on any representation or information of any nature made by or received from any Senior Lender relative to either Company or any Obligor in deciding to execute this Agreement or to permit it to continue in effect and (iii) that the Subordinated Lender is the current holder of the Subordinated Indebtedness.

(d) Notwithstanding anything contained in this Agreement to the contrary, the Subordinated Lender hereby represents and warrants to the Senior Agent and each Company that the Subordinated Lender has no security interest in or Lien on any assets of either Company or any Obligor or any Company Property.

5. Negative Covenants. Until all of the Senior Indebtedness has been Finally Paid: (A) the Subordinated Lender shall not demand, accept or acquire from either Company or any Obligor any security interest in or Lien on any assets of either Company or any Obligor or any Company Property, nor any collateral from either Company or any Obligor; (B) neither Company shall discharge the Subordinated Indebtedness other than in accordance with the terms of the Subordinated Documents; (C) the Subordinated Lender shall not demand or accept from either Company, any Obligor or other Person any consideration which would result in a discharge of the Subordinated Indebtedness; (D) the Subordinated Lender shall not hereafter give any subordination in respect of the Subordinated Indebtedness; and (E) neither Company shall hereafter issue any instrument, security or other writing evidencing any part of the Subordinated Indebtedness, and the Subordinated Lender shall not receive any such writing, except upon the condition that such security shall bear the legend referred to in Section 25 below and a true copy thereof shall be thereupon promptly furnished to the Senior Agent.

6. Permitted Payments. Notwithstanding the terms of the Subordinated Documents, each Company hereby agrees that it shall not make (and will not permit any other Obligor to make), and the Subordinated Lender hereby agrees that it will not accept, any payment or

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distribution with respect to the Subordinated Indebtedness including any payment or distribution received through the exercise of any right of setoff, counterclaim or crossclaim, until the Senior Indebtedness is Finally Paid; provided that the Companies may make to the Subordinated Lender and the Subordinated Lender may accept payments in kind (but not in cash) in respect of interest on the Subordinated Indebtedness, all on a non-accelerated basis and in accordance with the terms of the Subordinated Documents, (ii) reimbursement of all costs and expenses incurred by the Subordinated Lender in connection with the negotiation, execution, delivery and preparation the Kapoor Guaranty and the Related Agreements to which it is a party and the consummation of the transactions contemplated thereby and (iii) reimbursement of the costs of issuance of the unconditional standby letter of credit delivered to the Senior Agent by the Subordinated Lender pursuant to the Kapoor Guaranty; provided, that reimbursements pursuant to clauses (ii) and (iii) shall not exceed \$140,000 in the aggregate during the term of this Agreement.

7. Forbearance of Legal Remedies.

(a) Until the Senior Indebtedness is Finally Paid, the Subordinated Lender shall not, without the prior written consent of the Senior Agent, exercise any Subordinated Lender Remedies.

(b) Notwithstanding anything contained herein to the contrary or any rights or remedies available to the Subordinated Lender under any of the Subordinated Documents, applicable law or otherwise, prior to the time that the Senior Indebtedness has been Finally Paid, any payments, distributions or other proceeds obtained by the Subordinated Lender from the exercise of any Subordinated Lender Remedies shall in any event be held in trust by it for the benefit of the Senior Agent and the Senior Lenders and promptly paid or delivered to the Senior Agent for the benefit of the Senior Lenders in the form received.

8. Dissolution, Liquidation, Reorganization or Bankruptcy. (a) In the event of any Proceeding involving either Company or any Obligor:

(i) all Senior Indebtedness shall be Finally Paid before the Subordinated Lender shall be entitled to receive any payment on account of any Subordinated Indebtedness; and

(ii) any payment or distribution of assets of such Person of any kind or character, whether in cash, property or securities, to which the Subordinated Lender would be entitled except for these provisions, shall be paid by the liquidating trustee or agent or other Person making such payment or distribution directly to the Senior Agent, to the extent necessary to make Final Payment of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution or provision therefor to the holders of such Senior Indebtedness. The Subordinated Lender irrevocably authorizes, empowers and directs any debtor, debtor-in-possession, receiver, trustee or agent or other person having authority, to pay or otherwise deliver all such payments or distributions to Senior Agent.

(b) Until the Senior Indebtedness has been Finally Paid, if a Proceeding shall occur and be continuing, the Subordinated Lender shall file all claims it may have against either

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Company or any Obligor, and shall direct the debtor in possession or trustee in bankruptcy, as appropriate, to pay over to the Senior Agent all amounts due to the Subordinated Lender on account of the Subordinated Indebtedness until the Senior Indebtedness has been Finally Paid. If the Subordinated Lender fails to file such claims or to vote such claims prior to 30 days before the expiration of time to do so, the Senior Agent may (but shall have no obligation to) file and/or vote such claims in the Subordinated Lender's name on behalf of the Senior Lenders. If the Senior Agent votes any such claim in accordance with the authority granted hereof, the Subordinated Lender shall not be entitled to withdraw or change such vote.

(c) The Subordinated Lender agrees, in connection with any such Proceeding, that while it shall retain the right to vote and otherwise act in any such proceeding (including the right to vote to accept or reject any plan of partial or complete liquidation, reorganization, arrangement, composition or extension), it will not take any action or vote in any way so as to (i) contest the validity of the Liens securing the Senior Indebtedness, (ii) contest the enforceability of any of the Senior Loan Documents, (iii) contest the Senior Lenders' priority position over the Subordinated Lender created by this Agreement or (iv) take any position or action which would have directly or indirectly any of the following effects: (A) extension of the final maturity of and/or forgiveness, reduction or cram-down of the Senior Indebtedness or deferral of any required payment in respect of Senior Indebtedness, (B) opposing or objecting to initiatives or claims by the Senior Lenders for adequate protection or relief from the automatic stay, use of cash collateral or super-priority expense of administration for failure of adequate protection, (C) challenging in any respect treatment of the Senior Indebtedness as a first priority perfected fully secured claim, (D) blocking current payment of any obligation in respect of Senior Indebtedness, (E) assenting to or supporting any requested extension of the exclusivity period for the submission by Company of any plan of reorganization or liquidation under the Bankruptcy Code unless such extension is assented to or supported by the Senior Lenders; and (F) opposing or objecting to any sale or lease of any Company Property that has been consented to by the holders of Senior Indebtedness. In the event of any violation of any

provisions of this section by the Subordinated Lender, the Senior Lenders may in the name of the Subordinated Lender, or in their own name thereafter amend, modify or rescind any such prior act taken or vote issued, in violation of this Agreement.

(d) Until the Senior Indebtedness has been Finally Paid, if a Proceeding shall occur and be continuing, the Subordinated Lender hereby (i) expressly consents to any Senior Lender's providing post-petition financing to either Company or any Obligor or the granting by either Company or any Obligor to any Senior Lender of senior liens and priorities in connection therewith and/or the use of cash collateral and (ii) agrees that adequate notice of such financing or cash collateral usage to the Subordinated Lender shall have been provided if the Subordinated Lender received notice in accordance with Section 16 hereof 2 Business Days prior to the entry of any order approving such financing or cash collateral usage.

(e) If the Subordinated Lender has or at any time acquires any security interest or Lien for the Subordinated Indebtedness, the Subordinated Lender agrees not (i) to initiate any proceeding involving the marshalling of any Company Property (whether in a Proceeding or otherwise) or (ii) to assert any right it may have to "adequate protection" of its interest, if any, in such security in any Proceeding and agrees that it will not seek to have the automatic stay lifted

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with respect to such security, in each case without the prior written consent of the Senior Agent (not to be unreasonably withheld or delayed). The Subordinated Lender waives any claim or defense the Subordinated Lender may now or hereafter have arising out of the election by any Senior Lender in any Proceeding instituted under Chapter 11 of the Bankruptcy Code of any use of cash collateral, any borrowing or any grant of a security interest under Sections 363 and/or 364 of the Bankruptcy Code by either Company or any Obligor, as debtor-in-possession. The Subordinated Lender agrees that it will not object to or oppose a sale or other disposition of any property securing all or any part of the Senior Indebtedness free and clear of any security interests or other Liens or other claims of the Subordinated Lender under Section 363 of the Bankruptcy Code if the Senior Agent has consented to such sale or disposition. The Subordinated Lender further agrees that it will not seek to participate on any creditors committee without the Senior Agent's prior written consent. To the extent that any Senior Lender receives payments on, or proceeds of collateral for, the Senior Indebtedness which are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law, or equitable cause, then as between such Senior Lender and the Subordinated Lender hereunder, to the extent of such payment or proceeds received, the Senior Indebtedness, or part thereof, intended to be satisfied shall be revived and continue in full force and effect as if such payments or proceeds had not been received by such Senior Lender.

9. Obligation of Company Unconditional. Nothing contained herein or in the Senior Loan Documents is intended to or shall impair, as between either Company and the Subordinated Lender only, the obligation of the Companies, which is absolute and unconditional, to pay to the Subordinated Lender the Subordinated Indebtedness as and when the same shall become due and payable in accordance with their terms, or to affect the relative rights of the Subordinated Lender and creditors of the Companies other than the Senior Lenders.

10. Subordination Rights Not Impaired by Acts or Omissions of either Company or Holders of Senior Indebtedness.

(a) No right of any present or future holders of any Senior Indebtedness to enforce the subordination provisions as provided herein shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of either Company; by any act or failure to act by any such holder; by any act or failure to act by any other holder of the Senior Indebtedness; or by any noncompliance by either Company with the terms hereof, regardless of any knowledge thereof which any such holder may have or be otherwise charged with. The Subordinated Lender shall not be released, nor shall the Subordinated Lender's obligation hereunder be in anyway diminished, by any of the following: (i) the exercise or the failure to exercise by any Senior Lender of any rights or remedies conferred on it or them under the Senior Loan Documents, hereunder or existing at law or otherwise, or against any Company Property; (ii) the commencement of an action at law or the recovery of a judgment at law against

either Company or any Obligor for the performance of the Senior Indebtedness and the enforcement thereof through levy or execution or otherwise; (iii) the taking or institution or any other action or proceeding against either Company or any Obligor; (iv) any delay in taking, pursuing, or exercising any of the foregoing actions, rights, powers, or remedies (even though requested by the Subordinated Lender) by any Senior Lender or anyone acting for any Senior Lender; (v) any

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lack of validity or enforceability of any Senior Loan Document; (vi) the release or non-perfection of any collateral securing the Senior Indebtedness; or (vii) any other circumstance which might otherwise constitute a defense available to, or a discharge of, either Company or any Obligor in respect of the Senior Indebtedness or Subordinated Lender in respect of this Agreement (other than the Final Payment of the Senior Indebtedness).

(b) Without limiting the generality of the foregoing, and anything else contained herein to the contrary notwithstanding, any Senior Lender, from time to time, without prior notice to or the consent of the Subordinated Lender, may take all or any of the following actions without in any manner affecting or impairing the obligation or liability of the Subordinated Lender hereunder: (i) obtain a Lien in any property to secure any of the Senior Indebtedness; (ii) obtain the primary and secondary liability of any party or parties with respect to any of the Senior Indebtedness; (iii) renew, extend, or otherwise change the time for payment of the Senior Indebtedness or any installment thereof for any period, or change the interest rates and fees with respect to the Senior Indebtedness; (iv) renew, reaffirm, extend, release or otherwise change any liability of any nature of any person or entity, including any Obligor, with respect to the Senior Indebtedness; (v) exchange, enforce, waive, release, and apply any Company Property and direct the order or manner of sale thereof as such Senior Lender may in its discretion determine; (vi) enforce its rights hereunder, whether or not such Senior Lender shall proceed against any other Person; (vii) exercise its rights to consent to any action or non-action of either Company or any Obligor which may violate the covenants and agreements contained in the Senior Loan Documents, with or without consideration, on such terms and conditions as may be acceptable to it; or (viii) exercise any of its rights conferred by the Senior Loan Documents or by law.

11. Waivers. Each Company and the Subordinated Lender hereby waive, to the fullest extent permitted by law, any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy of specific performance of this Agreement in any action brought therefor by the Senior Lenders. To the fullest extent permitted by law and except as to any notices specified in this Agreement, notices regarding the intended sale or disposition of any portion of the collateral held by the Senior Lenders, or any notice which may not be waived in accordance with the UCC, each Company and the Subordinated Lender hereby further waive: (a) presentment, demand, protest, notice of protest, notice of default or dishonor, notice of payment or nonpayment and any and all other notices and demands of any kind in connection with all negotiable instruments evidencing all or any portion of the Senior Indebtedness or the Subordinated Indebtedness to which the Companies or the Subordinated Lender may be a party; (b) prior notice of and consent to any loans made, extensions granted or other action taken in reliance thereon; and (c) all other demands and notices of every kind in connection with this Agreement, the Senior Indebtedness or the Subordinated Indebtedness. The Subordinated Lender consents to any release, renewal, extension, compromise or postponement of the time of payment of the Senior Indebtedness, to any substitution, exchange or release of collateral therefor, and to the addition or release of any person primarily or secondarily liable thereon.

12. No Estoppel. Neither the failure nor any delay on the part of any Senior Lender to exercise any right, remedy, power or privilege hereunder shall operate as a waiver thereof or give rise to an estoppel, nor be construed as an agreement to modify the terms of this Agreement, nor

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shall any single or partial exercise of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then only to the extent specifically stated in such writing.

13. Incorrect Payments; Specific Performance. If either Company or any Obligor shall make or the Subordinated Lender shall collect any payment on account of the principal of, premium or interest on or any other amounts due under the Subordinated Indebtedness in contravention of this Agreement, such payments shall be held in trust by the Subordinated Lender and not commingled with any assets of the Subordinated Lender and shall be paid over and delivered to the Senior Agent, for the benefit of the Senior Lenders, promptly upon receipt thereof. At any time the Subordinated Lender fails to comply with any provision of this Agreement, the Senior Lenders may demand specific performance of this Agreement, whether or not either Company has complied with this Agreement, and may exercise any other remedy available at law or equity.

14. Amendment of the Subordinated Documents and Senior Loan Documents. The Subordinated Lender agrees that it will not, without the prior written consent of the Senior Agent, agree to any amendment, modification, waiver or supplement to the Subordinated Documents. The Senior Indebtedness may at any time be amended, extended, modified, restated, refinanced or waived without limitation, without notice to, or the consent of, the Subordinated Lender.

15. Inconsistent or Conflicting Provisions; Construction. If a provision of the Senior Loan Documents or the Subordinated Documents is inconsistent or conflicts with the provisions of this Agreement, the provisions of this Agreement shall govern and prevail. The term "including" is not limiting and means "including without limitation." In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including."

16. Notices. Any notice, consent or other communication provided for in this Agreement shall be in writing and shall be delivered personally (effective upon delivery), via facsimile (effective upon confirmation of transmission), via overnight courier (effective the next Business Day after dispatch if instructed to deliver on next business day) or via U.S. Mail (effective 3 days after mailing, postage prepaid, first class) to each party at its address(es) and/or facsimile number(s) set forth on Annex I hereto, or to such other address as either party shall specify to the other in writing from time to time. The Subordinated Lender shall provide the Senior Agent with written notice promptly upon the occurrence of an event of default under the Subordinated Documents.

17. Entire Agreement. This Agreement constitutes and expresses the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, whether express or implied, oral or written. Neither this Agreement nor any portion or provision hereof may be changed, waived or amended orally or in any manner other than by an

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agreement in writing signed by the Senior Agent and the Subordinated Lender; provided that any such change, waiver or amendment shall be binding upon each Company by their written consent thereto. This Agreement shall constitute a Loan Document and the recitals hereto shall constitute part of this Agreement.

18. Additional Documentation. Each Company and the Subordinated Lender shall execute and deliver to the Senior Agent such further instruments and shall take such further action (in each case, at the cost of the Companies) as the Senior Agent may at any time or times reasonably request in order to carry out the provisions and intent of this Agreement.

19. Expenses. The Companies, joint and severally, agree to pay the Senior Agent and the Senior Lenders on demand all expenses of every kind, including Attorney Costs, that the Senior Agent or the Senior Lenders incur in enforcing any of their rights against either Company and/or the Subordinated Lender under this Agreement.

20. Successors and Assigns.

(a) This Agreement shall inure to the benefit of each Senior Lender, the Subordinated Lender, and their respective successors and assigns, and shall be binding upon each Company and its successors and assigns, and each Senior Lender, the Subordinated Lender and their respective transferees, successors and assigns, including any subsequent holders of the Subordinated Note. Any Senior Lender, without prior notice or consent of any kind, may sell, assign or

transfer any Senior Indebtedness, and in such event each and every immediate and successive assignee or transferee thereof may be given the right by such Person to enforce this Agreement in full against each Company and the Subordinated Lender, by suit or otherwise, for its own benefit.

(b) The Subordinated Lender shall not sell, assign, pledge, dispose of or otherwise transfer all or any portion of the Subordinated Indebtedness or any Subordinated Document without the prior written consent of the Senior Agent which consent shall not be unreasonably withheld or delayed.

(c) Notwithstanding the failure of any transferee to execute or deliver an agreement substantially identical to this Agreement, the subordination effected hereby shall survive any sale, assignment, pledge, disposition or other transfer of all or any portion of the Subordinated Indebtedness, and the terms of this Agreement shall be binding upon the successors and assigns of each Subordinated Indebtedness, as provided in this Section 20.

(d) The Subordinated Lender hereby agrees that any party that refinances the Senior Indebtedness of the Senior Lenders may rely on and enforce this Agreement as if it were such Senior Lender. The Subordinated Lender further hereby agrees that it will, at the request of such Senior Lender, enter into an agreement, in the form of this Agreement, mutatis mutandis, to subordinate the Subordinated Indebtedness, to the same extent as provided herein, to the party refinancing all or a portion of such Senior Indebtedness; provided that the failure of the Subordinated Lender to execute such an agreement shall not affect such party's right to rely on and enforce the terms of this Agreement.

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21. Covenant Not to Challenge. This Agreement has been negotiated by the parties with the expectation and in reliance upon the assumption that the instruments and documents evidencing the Senior Indebtedness are valid and enforceable. In determining whether to enter into this Agreement, the Subordinated Lender has assumed such validity and enforceability, and has agreed to the provisions contained herein, without relying upon any reservation of a right to challenge or call into question such validity or enforceability. As between any Senior Lender and the Subordinated Lender, the Subordinated Lender hereby covenants and agrees, to the fullest extent permitted by law, that it shall not initiate in any proceeding a challenge to the validity or enforceability of the documents and instruments evidencing the Senior Indebtedness or the validity, perfection or priority of any Lien of the Senior Agent or the Senior Lenders securing the Senior Indebtedness, nor shall the Subordinated Lender instigate other parties to raise any such challenges, nor shall the Subordinated Lender participate in or otherwise assert any such challenges which are raised by other parties.

22. Subrogation. Subject to the Final Payment of all Senior Indebtedness and the provisions of Section 24 hereof, the Subordinated Lender shall be subrogated to the rights of the Senior Lenders to receive payments and distributions of cash, property and securities applicable to the Senior Indebtedness to the extent that distributions otherwise payable to the Subordinated Lender have been applied to the Senior Indebtedness, until all amounts payable under the Subordinated Indebtedness shall have been paid in full. For purposes of such subrogation, no payments or distributions to the Senior Lenders of any cash, property or securities to which the Subordinated Lender would be entitled except for the provisions of this Agreement, and no payment pursuant to the provisions of this Agreement to the Senior Lenders by the Subordinated Lender shall, as among the Companies and their creditors other than the Senior Lenders, be deemed to be a payment or distribution by either Company to or on account of the Senior Indebtedness. If either Company fails to make any payment on account of the Subordinated Indebtedness by reason of any provision contained herein, such failure shall, notwithstanding such provision contained herein, constitute a default with respect to the Subordinated Indebtedness if and to the extent such failure would otherwise constitute such a default in accordance with the terms of the Subordinated Indebtedness.

23. Termination of Agreement. This Agreement shall continue and shall be irrevocable until the date all of the Senior Indebtedness has been Finally Paid or otherwise discharged and released in an express writing to such effect by the Senior Lenders.

24. Reinstatement. The obligations of the Subordinated Lender under the Agreement shall continue to be effective, or be reinstated, as the case may be,

if at any time any payment in respect of any Senior Indebtedness is rescinded or must otherwise be restored or returned by any Senior Lender by reason of any bankruptcy, reorganization, arrangement, composition or similar proceeding or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, either Company, any Obligor or any substantial part of its property, or otherwise, all as though such payment had not been made.

25. Legends. Until the termination of this Agreement, the Subordinated Lender will cause to be clearly, conspicuously and prominently inserted (or otherwise attached thereto) on

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the face of the Subordinated Note and any other Subordinated Document, as well as any renewals or replacements thereof, the following legend:

"THIS INSTRUMENT AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO THE EXTENT SET FORTH IN THAT CERTAIN SUBORDINATION AND INTERCREDITOR AGREEMENT (THE "SUBORDINATION AGREEMENT") DATED AS OF OCTOBER 7, 2003 AMONG THE JOHN N. KAPOOR TRUST DATED SEPTEMBER 20, 1989, AKORN, INC., A LOUISIANA CORPORATION ("AKORN"), AND AKORN (NEW JERSEY), INC., AN ILLINOIS CORPORATION ("AKORN NJ"; TOGETHER WITH AKORN, EACH A "COMPANY" AND COLLECTIVELY THE "COMPANIES") AND LASALLE BANK NATIONAL ASSOCIATION (TOGETHER WITH ITS SUCCESSORS AND ASSIGNS, THE "SENIOR AGENT"), TO THE INDEBTEDNESS (INCLUDING INTEREST) OWED BY THE COMPANIES PURSUANT TO THAT CERTAIN CREDIT AGREEMENT DATED AS OF OCTOBER 7, 2003 AMONG THE COMPANIES, THE SENIOR AGENT AND THE LENDERS FROM TIME TO TIME PARTY THERETO, AND THE OTHER LOAN DOCUMENTS (AS DEFINED IN THE CREDIT AGREEMENT) AS SUCH CREDIT AGREEMENT AND OTHER LOAN DOCUMENTS MAY BE AMENDED, RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME AND TO INDEBTEDNESS REFINANCING THE INDEBTEDNESS THEREUNDER AS CONTEMPLATED BY THE SUBORDINATION AGREEMENT; AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE SUBORDINATION AGREEMENT."

Each Company's relevant books shall be marked to evidence the subordination of all of the Subordinated Indebtedness to the holders of Senior Indebtedness, in accordance with the terms of this Agreement. Each Senior Lender is authorized to examine such books from time to time in accordance with the terms of the Credit Agreement and to make any notations required by this Agreement.

26. Governing Law. THIS AGREEMENT SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF ILLINOIS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES. EACH COMPANY AND THE SUBORDINATED LENDER HEREBY AGREE THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY EACH COMPANY OR THE SUBORDINATED LENDER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT SHALL BE LITIGATED IN A COOK COUNTY, ILLINOIS COURT OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF ANY SENIOR LENDER INITIATES SUCH ACTION, IN ADDITION TO THE FOREGOING COURTS, ANY COURT IN WHICH SUCH SENIOR LENDER SHALL

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INITIATE SUCH ACTION, TO THE EXTENT SUCH COURT HAS JURISDICTION. EACH COMPANY AND THE SUBORDINATED LENDER HEREBY EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY ANY SENIOR LENDER AND HEREBY WAIVE ANY CLAIM THAT SUCH COURTS ARE AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED UPON LACK OF VENUE. THE EXCLUSIVE CHOICE OF FORUM AS SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY ANY SENIOR LENDER, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY ANY SENIOR LENDER, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND EACH COMPANY AND THE SUBORDINATED LENDER HEREBY WAIVE THE RIGHT TO COLLATERALLY ATTACK SUCH JUDGMENT OR ACTION.

27. Jury Trial. THE SENIOR AGENT, THE SUBORDINATED LENDER AND EACH COMPANY WAIVE TRIAL BY JURY IN ANY DISPUTE ARISING FROM, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

28. Severability. The provisions of this Agreement are independent of and

separable from each other. If any provision hereof shall for any reason be held invalid or unenforceable, it is the intent of the parties that such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof, and that this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

29. Counterparts. This Agreement may be executed in any number of separate counterparts, all of which, when taken together, shall constitute one and the same instrument, notwithstanding the fact that all parties did not sign the same counterpart. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof.

30. Sections. The section headings used in this Agreement are for convenience only and shall not affect the interpretation of any of the provisions hereof.

31. Defines Rights of Creditors. The provisions of this Agreement are solely for the purpose of defining the relative rights of the Senior Lenders and the Subordinated Lender and shall not be deemed to create any rights or priorities in favor of any other Person, including each Company.

[signature pages follow]

The parties hereto have executed this Agreement as of the date first above written.

COMPANIES:

AKORN, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AKORN (NEW JERSEY), INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SENIOR AGENT:

LASALLE BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SUBORDINATED LENDER:

THE JOHN N. KAPOOR TRUST dtd 9/20/89

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



ANNEX I

NOTICE ADDRESSES

COMPANIES:

c/o Akorn, Inc.  
2500 Milbrook Drive  
Buffalo Grove, Illinois 60089  
Attention: Chief Financial Officer  
Facsimile: (847) 279-6123

SENIOR AGENT:

LaSalle Bank National Association  
135 South LaSalle Street  
Chicago, Illinois 60603  
Attention: Patrick O'Toole  
Facsimile: (312) 904-0522

SUBORDINATED LENDER:

The John N. Kapoor Trust  
c/o Dr. John Kapoor  
225 E. Deerpath Road  
Suite 250  
Lake Forest, Illinois 60045  
Facsimile: (847) 279-6123

## SUBORDINATION AND INTERCREDITOR AGREEMENT

(LaSalle Bank National Association/Arjun Waney)

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT dated as of October 7, 2003 (as amended, supplemented or otherwise modified from time to time, this "Agreement") is entered into among AKORN, INC., a Louisiana corporation ("Akorn"), AKORN (NEW JERSEY), INC., an Illinois corporation ("Akorn NJ"; together with Akorn, each a "Company" and collectively, the "Companies"), LASALLE BANK NATIONAL ASSOCIATION, as Senior Agent (as hereinafter defined) for Senior Lenders under the Credit Agreement (as hereinafter defined), and ARJUN WANNEY (the "Subordinated Lender").

## RECITALS

A. The Senior Agent, certain financial institutions (together with the successors and assigns thereof, "Senior Lenders") and the Companies have entered into a Credit Agreement, dated as of the date hereof (as from time to time amended, modified, extended, renewed, refinanced, or restated, the "Credit Agreement"), together with the other Loan Documents (as defined in the Credit Agreement), whereby the Senior Lenders have made and shall make available to each of the Companies certain loans and other financial accommodations therein set forth. All of the Companies' obligations under the Senior Loan Documents (as hereinafter defined) are secured by assignments of and security interests in substantially all of the now or hereafter acquired assets of the Companies and their Subsidiaries, all as more fully set forth in the Loan Documents.

B. Akorn has issued Subordinated Promissory Note of even date herewith in the principal amount of \$600,000.00 (the "Subordinated Note", together with all guarantees and other documents or instruments executed in connection therewith (as from time to time modified, extended, renewed, refinanced or restated to the extent permitted by the terms of this Agreement, collectively the "Subordinated Documents")) in favor of the Subordinated Lender.

C. As a condition of the financing accommodations under the Loan Documents, the parties hereto are required to enter into this Agreement to establish the relative rights and priorities of the Senior Agent, the Senior Lenders and the Subordinated Lender under the Senior Loan Documents and the Subordinated Documents.

D. The Subordinated Lender will benefit from the financing accommodations made by the Senior Lenders under the Credit Agreement and the other Loan Documents. The Subordinated Lender and the Companies desire to enter into this Agreement in order to induce the Senior Lenders to enter into the Credit Agreement. The Subordinated Lender acknowledges that the Senior Lenders would not enter into the Senior Loan Documents but for the execution of this Agreement.

In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. Definitions. Except as otherwise provided herein, all capitalized terms used in this Agreement shall have the meanings ascribed to such terms in the Credit Agreement, provided that the following terms shall have the meanings set forth below:

"Bankruptcy Code" means Title 11 of the United States Code (11 U.S.C. Section 101 et. seq.) or any replacement or supplemental federal statute dealing with the bankruptcy of debtors.

"Company" and "Companies" shall have the meaning set forth in the preamble hereof.

"Company Property" means all assets, property and property rights, of any kind or nature, tangible or intangible, now or hereafter existing, in which either Company or any Obligor owns, asserts or maintains an interest.

"Credit Agreement" shall have the meaning set forth in the recitals hereof.

"Finally Paid" or "Final Payment," when used in connection with the

Senior Indebtedness, means the full and indefeasible payment in cash of all of the Senior Indebtedness and the irrevocable termination of all Commitments of all the Senior Lenders under the Senior Loan Documents.

"Liens" means any mortgage, deed of trust, pledge, lien, security interest, charge, set-off right or other encumbrance, whether now existing or hereafter created, acquired or arising.

"Obligor" means any guarantor or obligor of any Senior Indebtedness.

"Proceeding" means any voluntary or involuntary proceeding commenced by or against either Company or any Obligor under any provision of the Bankruptcy Code, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with its creditors, or proceedings seeking dissolution, receivership, reorganization, arrangement, or other similar relief.

"Senior Agent" means LaSalle Bank National Association, as Administrative Agent for Senior Lenders, or any other Person appointed by the holders of the Senior Indebtedness as administrative agent for purposes of the Senior Loan Documents and this Agreement, together with the successors and assigns of all of the foregoing.

"Senior Indebtedness" means all obligations, liabilities and indebtedness of every nature of either Company or any Obligor from time to time owed to the Senior Agent or any Senior Lender under the Senior Loan Documents, including the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all premium, fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable, whether before or after the filing of a Proceeding,

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including any Hedging Obligations and Bank Product Obligations at any time due and owing to any Senior Lender, together with (a) any indebtedness which refinances such principal, interest or other obligations and any amendments, modifications, renewals, restatements, refinancings or extensions thereof and (b) any interest accruing thereon after the commencement of a Proceeding, without regard to whether or not such interest is allowed in any Proceeding. Senior Indebtedness shall be deemed to be outstanding until it is Finally Paid.

"Senior Loan Documents" means the Credit Agreement, the other Loan Documents and all other agreements, documents and instruments executed from time to time in connection therewith, in each case as from time to time renewed, extended, amended, restated or modified and all agreements and instruments evidencing full or partial refundings or refinancings of the indebtedness thereunder.

"Subordinated Indebtedness" means all obligations, liabilities and indebtedness of every nature of either Company or any Obligor from time to time owed to the Subordinated Lender under the Subordinated Documents, including the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all premium, fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable under or in respect of the Subordinated Documents, whether before or after the filing of a Proceeding (including any amounts payable by either Company or any Obligor in connection with put, redemption, repurchase or repurchase rights under any warrants or any Capital Securities of either Company or any Obligor held by the Subordinated Lender), together with (a) any amendments, modifications, renewals, restatements, refinancings or extensions thereof and (b) any interest accruing thereon after the commencement of a Proceeding, without regard to whether or not such interest is allowed in any Proceeding.

"Subordinated Lender Remedies" means any action (a) to take from or for the account of either Company, any Obligor, any other guarantor of the Subordinated Indebtedness or any other Person, by set-off or in any other manner, the whole or any part of any moneys which may now or hereafter be owing by either Company (other than receipt of payments of Subordinated Indebtedness to the extent permitted by this Agreement), any Obligor, any such guarantor or any other Person with respect to the Subordinated Indebtedness, (b) to sue for payment of, or to initiate or participate with others in any suit, action or proceeding (including any Proceeding) against either Company, any Obligor, any such guarantor or any other Person to (i) enforce payment of or to collect the

whole or any part of the Subordinated Indebtedness or (ii) commence judicial enforcement of any of the rights and remedies under the Subordinated Documents or applicable law with respect to the Subordinated Indebtedness, (c) to accelerate the Subordinated Indebtedness, (d) to exercise any put, repurchase or similar option or to cause either Company, any Obligor, any such guarantor or any other Person to honor any redemption or mandatory prepayment obligation under any Subordinated Document or (e) to take any action under the provisions of any state or federal law, including the UCC, or under any contract or agreement, to enforce, foreclose upon, take possession of or sell any Company Property or any property or assets of any such guarantor or any other Person.

"Subordinated Lender" shall have the meaning set forth in the preamble hereof.

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"Subordinated Note" shall have the meaning set forth in the recitals hereof.

"UCC" means Article 9 of the Uniform Commercial Code, as in effect in any relevant jurisdiction.

2. Subordination of Subordinated Indebtedness to Senior Indebtedness. Each Company covenants and agrees, and the Subordinated Lender by its acceptance of the Subordinated Documents (whether upon original issue or upon transfer or assignment) likewise covenants and agrees, notwithstanding anything to the contrary contained in any of the Subordinated Documents, that the payment of any and all of the Subordinated Indebtedness shall be subordinate and subject in right and time of payment, to the extent and in the manner hereinafter set forth, to the Final Payment of all Senior Indebtedness; provided that the foregoing shall in no way limit the ability of each company to pay the amounts detailed in the proviso to Section 6 below. Each holder of Senior Indebtedness, whether now outstanding or hereafter created, incurred, assumed or guaranteed, shall be deemed to have acquired Senior Indebtedness in reliance upon the provisions contained in this Agreement.

### 3. Subordination of Liens.

(a) The Subordinated Lender hereby covenants and agrees that any Liens and rights of any kind the Subordinated Lender may now have and hereafter acquire (or be deemed to now have or hereafter acquire) against either Company or any Obligor and/or any Company Property, if any, shall be subordinate and subject to the Liens and rights against either Company, Obligors and/or Company Property of the Senior Lenders arising from or out of the Senior Indebtedness, regardless of the order, time or manner in which any Liens attach to or are perfected in any Company Property.

(b) If (x) either Company or any Obligor, as the case may be, desires to make any distribution or payment or to sell any Company Property as to which the Senior Lenders have provided their written consent or which is otherwise permitted under the Senior Loan Documents or (y) the Senior Lenders release their Lien in connection with any sale or disposition of any Company Property, the Subordinated Lender shall be deemed to have consented to such disposition and shall execute such releases with respect to such Company Property to be sold as the Senior Agent or the Senior Lenders request to evidence the release of any Lien against such property the Subordinated Lender may have or be deemed to have. The Subordinated Lender hereby irrevocably appoints the holders of the Senior Indebtedness, or the Senior Agent on their behalf, as the true and lawful attorneys of the Subordinated Lender for the purpose of executing and filing any such releases. The Subordinated Lender hereby waives any rights the Subordinated Lender has or may have in the future to object to the appointment of a receiver for all or any portion of the equity or the assets of either Company or any Obligor or to require any Senior Lender to marshal the collateral and agrees that each Senior Lender may proceed against the collateral in any order that it deems appropriate in the exercise of its absolute discretion.

### 4. Warranties and Representations of Companies and Subordinated Lender.

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(a) Each Company and the Subordinated Lender hereby severally represent and warrant to the Senior Lenders that each Senior Lender has been furnished with a true and correct copy of all instruments and securities in existence as of the date hereof evidencing or pertaining to the Subordinated

Indebtedness.

(b) Each Company hereby represents and warrants to the Senior Lenders that this Agreement has been duly executed and delivered by each Company and constitutes a legal, valid and binding obligation of each Company enforceable in accordance with its terms except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect affecting generally the enforcement of creditors' rights and remedies and general principles of equity.

(c) The Subordinated Lender represents and warrants to the Senior Lenders: (i) that this Agreement has been duly executed and delivered by the Subordinated Lender and constitutes a legal, valid and binding obligation of the Subordinated Lender enforceable against the Subordinated Lender in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect affecting generally the enforcement of creditors' rights and remedies and general principles of equity, (ii) that the Subordinated Lender has not relied and shall not rely on any representation or information of any nature made by or received from any Senior Lender relative to either Company or any Obligor in deciding to execute this Agreement or to permit it to continue in effect (iii) that the Subordinated Lender is the current holder of the Subordinated Indebtedness.

(d) Notwithstanding anything contained in this Agreement to the contrary, the Subordinated Lender hereby represents and warrants to the Senior Agent and each Company that the Subordinated Lender has no security interest in or Lien on any assets of either Company or any Obligor or any Company Property.

5. Negative Covenants. Until all of the Senior Indebtedness has been Finally Paid: (A) the Subordinated Lender shall not demand, accept or acquire from either Company or any Obligor any security interest in or Lien on any assets of either Company or any Obligor or any Company Property, nor any collateral from either Company or any Obligor; (B) neither Company shall discharge the Subordinated Indebtedness other than in accordance with the terms of the Subordinated Documents; (C) the Subordinated Lender shall not demand or accept from either Company, any Obligor or other Person any consideration which would result in a discharge of the Subordinated Indebtedness; (D) the Subordinated Lender shall not hereafter give any subordination in respect of the Subordinated Indebtedness; and (E) neither Company shall hereafter issue any instrument, security or other writing evidencing any part of the Subordinated Indebtedness, and the Subordinated Lender shall not receive any such writing, except upon the condition that such security shall bear the legend referred to in Section 25 below and a true copy thereof shall be thereupon promptly furnished to the Senior Agent.

6. Permitted Payments. Notwithstanding the terms of the Subordinated Documents, each Company hereby agrees that it shall not make (and will not permit any other Obligor to make), and the Subordinated Lender hereby agrees that it will not accept, any payment or

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distribution with respect to the Subordinated Indebtedness including any payment or distribution received through the exercise of any right of setoff, counterclaim or crossclaim, until the Senior Indebtedness is Finally Paid; provided that the Companies may make to the Subordinated Lender and the Subordinated Lender may accept payments in kind (but not in cash) in respect of interest on the Subordinated Indebtedness, all on a non-accelerated basis and in accordance with the terms of the Subordinated Documents.

7. Forbearance of Legal Remedies.

(a) Until the Senior Indebtedness is Finally Paid, the Subordinated Lender shall not, without the prior written consent of the Senior Agent, exercise any Subordinated Lender Remedies.

(b) Notwithstanding anything contained herein to the contrary or any rights or remedies available to the Subordinated Lender under any of the Subordinated Documents, applicable law or otherwise, prior to the time that the Senior Indebtedness has been Finally Paid, any payments, distributions or other proceeds obtained by the Subordinated Lender from the exercise of any Subordinated Lender Remedies shall in any event be held in trust by it for the benefit of the Senior Agent and the Senior Lenders and promptly paid or

delivered to the Senior Agent for the benefit of the Senior Lenders in the form received.

8. Dissolution, Liquidation, Reorganization or Bankruptcy. (a) In the event of any Proceeding involving either Company or any Obligor:

(i) all Senior Indebtedness shall be Finally Paid before the Subordinated Lender shall be entitled to receive any payment on account of any Subordinated Indebtedness; and

(ii) any payment or distribution of assets of such Person of any kind or character, whether in cash, property or securities, to which the Subordinated Lender would be entitled except for these provisions, shall be paid by the liquidating trustee or agent or other Person making such payment or distribution directly to the Senior Agent, to the extent necessary to make Final Payment of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution or provision therefor to the holders of such Senior Indebtedness. The Subordinated Lender irrevocably authorizes, empowers and directs any debtor, debtor-in-possession, receiver, trustee or agent or other person having authority, to pay or otherwise deliver all such payments or distributions to Senior Agent.

(b) Until the Senior Indebtedness has been Finally Paid, if a Proceeding shall occur and be continuing, the Subordinated Lender shall file all claims it may have against either Company or any Obligor, and shall direct the debtor in possession or trustee in bankruptcy, as appropriate, to pay over to the Senior Agent all amounts due to the Subordinated Lender on account of the Subordinated Indebtedness until the Senior Indebtedness has been Finally Paid. If the Subordinated Lender fails to file such claims or to vote such claims prior to 30 days before the expiration of time to do so, the Senior Agent may (but shall have no obligation to) file and/or vote such claims in the Subordinated Lender's name on behalf of the Senior Lenders. If the

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Senior Agent votes any such claim in accordance with the authority granted hereof, the Subordinated Lender shall not be entitled to withdraw or change such vote.

(c) The Subordinated Lender agrees, in connection with any such Proceeding, that while it shall retain the right to vote and otherwise act in any such proceeding (including the right to vote to accept or reject any plan of partial or complete liquidation, reorganization, arrangement, composition or extension), it will not take any action or vote in any way so as to (i) contest the validity of the Liens securing the Senior Indebtedness, (ii) contest the enforceability of any of the Senior Loan Documents, (iii) contest the Senior Lenders' priority position over the Subordinated Lender created by this Agreement or (iv) take any position or action which would have directly or indirectly any of the following effects: (A) extension of the final maturity of and/or forgiveness, reduction or cram-down of the Senior Indebtedness or deferral of any required payment in respect of Senior Indebtedness, (B) opposing or objecting to initiatives or claims by the Senior Lenders for adequate protection or relief from the automatic stay, use of cash collateral or super-priority expense of administration for failure of adequate protection, (C) challenging in any respect treatment of the Senior Indebtedness as a first priority perfected fully secured claim, (D) blocking current payment of any obligation in respect of Senior Indebtedness, (E) assenting to or supporting any requested extension of the exclusivity period for the submission by Company of any plan of reorganization or liquidation under the Bankruptcy Code unless such extension is assented to or supported by the Senior Lenders; and (F) opposing or objecting to any sale or lease of any Company Property that has been consented to by the holders of Senior Indebtedness. In the event of any violation of any provisions of this section by the Subordinated Lender, the Senior Lenders may in the name of the Subordinated Lender, or in their own name thereafter amend, modify or rescind any such prior act taken or vote issued, in violation of this Agreement.

(d) Until the Senior Indebtedness has been Finally Paid, if a Proceeding shall occur and be continuing, the Subordinated Lender hereby (i) expressly consents to any Senior Lender's providing post-petition financing to either Company or any Obligor or the granting by either Company or any Obligor to any Senior Lender of senior liens and priorities in connection therewith and/or the use of cash collateral and (ii) agrees that adequate notice of such financing or cash collateral usage to the Subordinated Lender shall have been provided if the Subordinated Lender received notice in accordance with Section

16 hereof 2 Business Days prior to the entry of any order approving such financing or cash collateral usage.

(e) If the Subordinated Lender has or at any time acquires any security interest or Lien for the Subordinated Indebtedness, the Subordinated Lender agrees not (i) to initiate any proceeding involving the marshalling of any Company Property (whether in a Proceeding or otherwise) or (ii) to assert any right it may have to "adequate protection" of its interest, if any, in such security in any Proceeding and agrees that it will not seek to have the automatic stay lifted with respect to such security, in each case without the prior written consent of the Senior Agent (not to be unreasonably withheld or delayed). The Subordinated Lender waives any claim or defense the Subordinated Lender may now or hereafter have arising out of the election by any Senior Lender in any Proceeding instituted under Chapter 11 of the Bankruptcy Code of any use of cash collateral, any borrowing or any grant of a security interest under Sections 363 and/or 364 of the Bankruptcy Code by either Company or any Obligor, as debtor-in-possession. The

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Subordinated Lender agrees that it will not object to or oppose a sale or other disposition of any property securing all or any part of the Senior Indebtedness free and clear of any security interests or other Liens or other claims of the Subordinated Lender under Section 363 of the Bankruptcy Code if the Senior Agent has consented to such sale or disposition. The Subordinated Lender further agrees that it will not seek to participate on any creditors committee without the Senior Agent's prior written consent. To the extent that any Senior Lender receives payments on, or proceeds of collateral for, the Senior Indebtedness which are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law, or equitable cause, then as between such Senior Lender and the Subordinated Lender hereunder, to the extent of such payment or proceeds received, the Senior Indebtedness, or part thereof, intended to be satisfied shall be revived and continue in full force and effect as if such payments or proceeds had not been received by such Senior Lender.

9. Obligation of Company Unconditional. Nothing contained herein or in the Senior Loan Documents is intended to or shall impair, as between either Company and the Subordinated Lender only, the obligation of the Companies, which is absolute and unconditional, to pay to the Subordinated Lender the Subordinated Indebtedness as and when the same shall become due and payable in accordance with their terms, or to affect the relative rights of the Subordinated Lender and creditors of the Companies other than the Senior Lenders.

10. Subordination Rights Not Impaired by Acts or Omissions of either Company or Holders of Senior Indebtedness.

(a) No right of any present or future holders of any Senior Indebtedness to enforce the subordination provisions as provided herein shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of either Company; by any act or failure to act by any such holder; by any act or failure to act by any other holder of the Senior Indebtedness; or by any noncompliance by either Company with the terms hereof, regardless of any knowledge thereof which any such holder may have or be otherwise charged with. The Subordinated Lender shall not be released, nor shall the Subordinated Lender's obligation hereunder be in anyway diminished, by any of the following: (i) the exercise or the failure to exercise by any Senior Lender of any rights or remedies conferred on it or them under the Senior Loan Documents, hereunder or existing at law or otherwise, or against any Company Property; (ii) the commencement of an action at law or the recovery of a judgment at law against either Company or any Obligor for the performance of the Senior Indebtedness and the enforcement thereof through levy or execution or otherwise; (iii) the taking or institution or any other action or proceeding against either Company or any Obligor; (iv) any delay in taking, pursuing, or exercising any of the foregoing actions, rights, powers, or remedies (even though requested by the Subordinated Lender) by any Senior Lender or anyone acting for any Senior Lender; (v) any lack of validity or enforceability of any Senior Loan Document; (vi) the release or non-perfection of any collateral securing the Senior Indebtedness; or (vii) any other circumstance which might otherwise constitute a defense available to, or a discharge of, either Company or any Obligor in respect of the Senior Indebtedness or Subordinated Lender in respect of this Agreement (other than the Final Payment of the Senior Indebtedness).

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(b) Without limiting the generality of the foregoing, and anything else contained herein to the contrary notwithstanding, any Senior Lender, from time to time, without prior notice to or the consent of the Subordinated Lender, may take all or any of the following actions without in any manner affecting or impairing the obligation or liability of the Subordinated Lender hereunder: (i) obtain a Lien in any property to secure any of the Senior Indebtedness; (ii) obtain the primary and secondary liability of any party or parties with respect to any of the Senior Indebtedness; (iii) renew, extend, or otherwise change the time for payment of the Senior Indebtedness or any installment thereof for any period, or change the interest rates and fees with respect to the Senior Indebtedness; (iv) renew, reaffirm, extend, release or otherwise change any liability of any nature of any person or entity, including any Obligor, with respect to the Senior Indebtedness; (v) exchange, enforce, waive, release, and apply any Company Property and direct the order or manner of sale thereof as such Senior Lender may in its discretion determine; (vi) enforce its rights hereunder, whether or not such Senior Lender shall proceed against any other Person; (vii) exercise its rights to consent to any action or non-action of either Company or any Obligor which may violate the covenants and agreements contained in the Senior Loan Documents, with or without consideration, on such terms and conditions as may be acceptable to it; or (viii) exercise any of its rights conferred by the Senior Loan Documents or by law.

11. Waivers. Each Company and the Subordinated Lender hereby waive, to the fullest extent permitted by law, any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy of specific performance of this Agreement in any action brought therefor by the Senior Lenders. To the fullest extent permitted by law and except as to any notices specified in this Agreement, notices regarding the intended sale or disposition of any portion of the collateral held by the Senior Lenders, or any notice which may not be waived in accordance with the UCC, each Company and the Subordinated Lender hereby further waive: (a) presentment, demand, protest, notice of protest, notice of default or dishonor, notice of payment or nonpayment and any and all other notices and demands of any kind in connection with all negotiable instruments evidencing all or any portion of the Senior Indebtedness or the Subordinated Indebtedness to which the Companies or the Subordinated Lender may be a party; (b) prior notice of and consent to any loans made, extensions granted or other action taken in reliance thereon; and (c) all other demands and notices of every kind in connection with this Agreement, the Senior Indebtedness or the Subordinated Indebtedness. The Subordinated Lender consents to any release, renewal, extension, compromise or postponement of the time of payment of the Senior Indebtedness, to any substitution, exchange or release of collateral therefor, and to the addition or release of any person primarily or secondarily liable thereon.

12. No Estoppel. Neither the failure nor any delay on the part of any Senior Lender to exercise any right, remedy, power or privilege hereunder shall operate as a waiver thereof or give rise to an estoppel, nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then only to the extent specifically stated in such writing.

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13. Incorrect Payments; Specific Performance. If either Company or any Obligor shall make or the Subordinated Lender shall collect any payment on account of the principal of, premium or interest on or any other amounts due under the Subordinated Indebtedness in contravention of this Agreement, such payments shall be held in trust by the Subordinated Lender and not commingled with any assets of the Subordinated Lender and shall be paid over and delivered to the Senior Agent, for the benefit of the Senior Lenders, promptly upon receipt thereof. At any time the Subordinated Lender fails to comply with any provision of this Agreement, the Senior Lenders may demand specific performance of this Agreement, whether or not either Company has complied with this Agreement, and may exercise any other remedy available at law or equity.

14. Amendment of the Subordinated Documents and Senior Loan Documents. The Subordinated Lender agrees that it will not, without the prior written consent of the Senior Agent, agree to any amendment, modification, waiver or supplement to the Subordinated Documents. The Senior Indebtedness may at any time be amended, extended, modified, restated, refinanced or waived without limitation, without notice to, or the consent of, the Subordinated Lender.



15. Inconsistent or Conflicting Provisions; Construction. If a provision of the Senior Loan Documents or the Subordinated Documents is inconsistent or conflicts with the provisions of this Agreement, the provisions of this Agreement shall govern and prevail. The term "including" is not limiting and means "including without limitation." In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including."

16. Notices. Any notice, consent or other communication provided for in this Agreement shall be in writing and shall be delivered personally (effective upon delivery), via facsimile (effective upon confirmation of transmission), via overnight courier (effective the next Business Day after dispatch if instructed to deliver on next business day) or via U.S. Mail (effective 3 days after mailing, postage prepaid, first class) to each party at its address(es) and/or facsimile number(s) set forth on Annex I hereto, or to such other address as either party shall specify to the other in writing from time to time. The Subordinated Lender shall provide the Senior Agent with written notice promptly upon the occurrence of an event of default under the Subordinated Documents.

17. Entire Agreement. This Agreement constitutes and expresses the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, whether express or implied, oral or written. Neither this Agreement nor any portion or provision hereof may be changed, waived or amended orally or in any manner other than by an agreement in writing signed by the Senior Agent and the Subordinated Lender; provided that any such change, waiver or amendment shall be binding upon each Company by their written consent thereto. This Agreement shall constitute a Loan Document and the recitals hereto shall constitute part of this Agreement.

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18. Additional Documentation. Each Company and the Subordinated Lender shall execute and deliver to the Senior Agent such further instruments and shall take such further action (in each case, at the cost of the Companies) as the Senior Agent may at any time or times reasonably request in order to carry out the provisions and intent of this Agreement.

19. Expenses. The Companies, joint and severally, agree to pay the Senior Agent and the Senior Lenders on demand all expenses of every kind, including Attorney Costs, that the Senior Agent or the Senior Lenders incur in enforcing any of their rights against either Company and/or the Subordinated Lender under this Agreement.

20. Successors and Assigns.

(a) This Agreement shall inure to the benefit of each Senior Lender, the Subordinated Lender, and their respective successors and assigns, and shall be binding upon each Company and its successors and assigns, and each Senior Lender, the Subordinated Lender and their respective transferees, successors and assigns, including any subsequent holders of the Subordinated Note. Any Senior Lender, without prior notice or consent of any kind, may sell, assign or transfer any Senior Indebtedness, and in such event each and every immediate and successive assignee or transferee thereof may be given the right by such Person to enforce this Agreement in full against each Company and the Subordinated Lender, by suit or otherwise, for its own benefit.

(b) The Subordinated Lender shall not sell, assign, pledge, dispose of or otherwise transfer all or any portion of the Subordinated Indebtedness or any Subordinated Document without the prior written consent of the Senior Agent which consent shall not be unreasonably withheld or delayed.

(c) Notwithstanding the failure of any transferee to execute or deliver an agreement substantially identical to this Agreement, the subordination effected hereby shall survive any sale, assignment, pledge, disposition or other transfer of all or any portion of the Subordinated Indebtedness, and the terms of this Agreement shall be binding upon the successors and assigns of each Subordinated Indebtedness, as provided in this Section 20.

(d) The Subordinated Lender hereby agrees that any party that refinances the Senior Indebtedness of the Senior Lenders may rely on and enforce this Agreement as if it were such Senior Lender. The Subordinated Lender further hereby agrees that it will, at the request of such Senior Lender, enter into an

agreement, in the form of this Agreement, mutatis mutandis, to subordinate the Subordinated Indebtedness, to the same extent as provided herein, to the party refinancing all or a portion of such Senior Indebtedness; provided that the failure of the Subordinated Lender to execute such an agreement shall not affect such party's right to rely on and enforce the terms of this Agreement.

21. Covenant Not to Challenge. This Agreement has been negotiated by the parties with the expectation and in reliance upon the assumption that the instruments and documents evidencing the Senior Indebtedness are valid and enforceable. In determining whether to enter into this Agreement, the Subordinated Lender has assumed such validity and enforceability, and

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has agreed to the provisions contained herein, without relying upon any reservation of a right to challenge or call into question such validity or enforceability. As between any Senior Lender and the Subordinated Lender, the Subordinated Lender hereby covenants and agrees, to the fullest extent permitted by law, that it shall not initiate in any proceeding a challenge to the validity or enforceability of the documents and instruments evidencing the Senior Indebtedness or the validity, perfection or priority of any Lien of the Senior Agent or the Senior Lenders securing the Senior Indebtedness, nor shall the Subordinated Lender instigate other parties to raise any such challenges, nor shall the Subordinated Lender participate in or otherwise assert any such challenges which are raised by other parties.

22. Subrogation. Subject to the Final Payment of all Senior Indebtedness and the provisions of Section 24 hereof, the Subordinated Lender shall be subrogated to the rights of the Senior Lenders to receive payments and distributions of cash, property and securities applicable to the Senior Indebtedness to the extent that distributions otherwise payable to the Subordinated Lender have been applied to the Senior Indebtedness, until all amounts payable under the Subordinated Indebtedness shall have been paid in full. For purposes of such subrogation, no payments or distributions to the Senior Lenders of any cash, property or securities to which the Subordinated Lender would be entitled except for the provisions of this Agreement, and no payment pursuant to the provisions of this Agreement to the Senior Lenders by the Subordinated Lender shall, as among the Companies and their creditors other than the Senior Lenders, be deemed to be a payment or distribution by either Company to or on account of the Senior Indebtedness. If either Company fails to make any payment on account of the Subordinated Indebtedness by reason of any provision contained herein, such failure shall, notwithstanding such provision contained herein, constitute a default with respect to the Subordinated Indebtedness if and to the extent such failure would otherwise constitute such a default in accordance with the terms of the Subordinated Indebtedness.

23. Termination of Agreement. This Agreement shall continue and shall be irrevocable until the date all of the Senior Indebtedness has been Finally Paid or otherwise discharged and released in an express writing to such effect by the Senior Lenders.

24. Reinstatement. The obligations of the Subordinated Lender under the Agreement shall continue to be effective, or be reinstated, as the case may be, if at any time any payment in respect of any Senior Indebtedness is rescinded or must otherwise be restored or returned by any Senior Lender by reason of any bankruptcy, reorganization, arrangement, composition or similar proceeding or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, either Company, any Obligor or any substantial part of its property, or otherwise, all as though such payment had not been made.

25. Legends. Until the termination of this Agreement, the Subordinated Lender will cause to be clearly, conspicuously and prominently inserted (or otherwise attached thereto) on the face of the Subordinated Note and any other Subordinated Document, as well as any renewals or replacements thereof, the following legend:

"THIS INSTRUMENT AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO

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THE EXTENT SET FORTH IN THAT CERTAIN SUBORDINATION AND INTERCREDITOR AGREEMENT (THE "SUBORDINATION AGREEMENT") DATED AS OF OCTOBER 7, 2003 AMONG ARJUN WANNEY, AKORN, INC., A LOUISIANA CORPORATION

("AKORN"), AND AKORN (NEW JERSEY), INC., AN ILLINOIS CORPORATION ("AKORN NJ"; TOGETHER WITH AKORN, EACH A "COMPANY" AND COLLECTIVELY THE "COMPANIES") AND LASALLE BANK NATIONAL ASSOCIATION (TOGETHER WITH ITS SUCCESSORS AND ASSIGNS, THE "SENIOR AGENT"), TO THE INDEBTEDNESS (INCLUDING INTEREST) OWED BY THE COMPANIES PURSUANT TO THAT CERTAIN CREDIT AGREEMENT DATED AS OF OCTOBER 7, 2003 AMONG THE COMPANIES, THE SENIOR AGENT AND THE LENDERS FROM TIME TO TIME PARTY THERETO, AND THE OTHER LOAN DOCUMENTS (AS DEFINED IN THE CREDIT AGREEMENT) AS SUCH CREDIT AGREEMENT AND OTHER LOAN DOCUMENTS MAY BE AMENDED, RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME AND TO INDEBTEDNESS REFINANCING THE INDEBTEDNESS THEREUNDER AS CONTEMPLATED BY THE SUBORDINATION AGREEMENT; AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE SUBORDINATION AGREEMENT."

Each Company's relevant books shall be marked to evidence the subordination of all of the Subordinated Indebtedness to the holders of Senior Indebtedness, in accordance with the terms of this Agreement. Each Senior Lender is authorized to examine such books from time to time in accordance with the terms of the Credit Agreement and to make any notations required by this Agreement.

26. Governing Law. THIS AGREEMENT SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF ILLINOIS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES. EACH COMPANY AND THE SUBORDINATED LENDER HEREBY AGREE THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY EACH COMPANY OR THE SUBORDINATED LENDER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT SHALL BE LITIGATED IN A COOK COUNTY, ILLINOIS COURT OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF ANY SENIOR LENDER INITIATES SUCH ACTION, IN ADDITION TO THE FOREGOING COURTS, ANY COURT IN WHICH SUCH SENIOR LENDER SHALL INITIATE SUCH ACTION, TO THE EXTENT SUCH COURT HAS JURISDICTION. EACH COMPANY AND THE SUBORDINATED LENDER HEREBY EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY ANY SENIOR LENDER AND HEREBY WAIVE ANY CLAIM THAT SUCH COURTS ARE AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED

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UPON LACK OF VENUE. THE EXCLUSIVE CHOICE OF FORUM AS SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY ANY SENIOR LENDER, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY ANY SENIOR LENDER, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND EACH COMPANY AND THE SUBORDINATED LENDER HEREBY WAIVE THE RIGHT TO COLLATERALLY ATTACK SUCH JUDGMENT OR ACTION.

27. Jury Trial. THE SENIOR AGENT, THE SUBORDINATED LENDER AND EACH COMPANY WAIVE TRIAL BY JURY IN ANY DISPUTE ARISING FROM, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

28. Severability. The provisions of this Agreement are independent of and separable from each other. If any provision hereof shall for any reason be held invalid or unenforceable, it is the intent of the parties that such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof, and that this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

29. Counterparts. This Agreement may be executed in any number of separate counterparts, all of which, when taken together, shall constitute one and the same instrument, notwithstanding the fact that all parties did not sign the same counterpart. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof.

30. Sections. The section headings used in this Agreement are for convenience only and shall not affect the interpretation of any of the provisions hereof.

31. Defines Rights of Creditors. The provisions of this Agreement are solely for the purpose of defining the relative rights of the Senior Lenders and the Subordinated Lender and shall not be deemed to create any rights or priorities in favor of any other Person, including each Company.

[signature pages follow]

The parties hereto have executed this Agreement as of the date first above written.

COMPANIES: AKORN, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AKORN (NEW JERSEY), INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SENIOR AGENT: LASALLE BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SUBORDINATED LENDER: ARJUN WANNEY

By: \_\_\_\_\_  
Name: Arjun Wanney

ANNEX I

NOTICE ADDRESSES

COMPANIES:

c/o Akorn, Inc.  
2500 Milbrook Drive  
Buffalo Grove, Illinois 60089  
Attention: Chief Financial Officer  
Facsimile: (847) 279-6123

SENIOR AGENT:

LaSalle Bank National Association  
135 South LaSalle Street  
Chicago, Illinois 60603  
Attention: Patrick O'Toole  
Facsimile: (312) 904-0522

SUBORDINATED LENDER:

Arjun Wanney  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

SUBORDINATION AND INTERCREDITOR AGREEMENT  
(LaSalle Bank National Association/Argent Fund Management Ltd.)

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT dated as of October 7, 2003 (as amended, supplemented or otherwise modified from time to time, this "Agreement") is entered into among AKORN, INC., a Louisiana corporation ("Akorn"), AKORN (NEW JERSEY), INC., an Illinois corporation ("Akorn NJ"; together with Akorn, each a "Company" and collectively, the "Companies"), LASALLE BANK NATIONAL ASSOCIATION, as Senior Agent (as hereinafter defined) for Senior Lenders under the Credit Agreement (as hereinafter defined), and ARGENT FUND MANAGEMENT LTD. (the "Subordinated Lender").

RECITALS

A. The Senior Agent, certain financial institutions (together with the successors and assigns thereof, "Senior Lenders") and the Companies have entered into a Credit Agreement, dated as of the date hereof (as from time to time amended, modified, extended, renewed, refinanced, or restated, the "Credit Agreement"), together with the other Loan Documents (as defined in the Credit Agreement), whereby the Senior Lenders have made and shall make available to each of the Companies certain loans and other financial accommodations therein set forth. All of the Companies' obligations under the Senior Loan Documents (as hereinafter defined) are secured by assignments of and security interests in substantially all of the now or hereafter acquired assets of the Companies and their Subsidiaries, all as more fully set forth in the Loan Documents.

B. Akorn has issued Subordinated Promissory Note of even date herewith in the principal amount of \$50,000.00 (the "Subordinated Note", together with all guarantees and other documents or instruments executed in connection therewith (as from time to time modified, extended, renewed, refinanced or restated to the extent permitted by the terms of this Agreement, collectively the "Subordinated Documents")) in favor of the Subordinated Lender.

C. As a condition of the financing accommodations under the Loan Documents, the parties hereto are required to enter into this Agreement to establish the relative rights and priorities of the Senior Agent, the Senior Lenders and the Subordinated Lender under the Senior Loan Documents and the Subordinated Documents.

D. The Subordinated Lender will benefit from the financing accommodations made by the Senior Lenders under the Credit Agreement and the other Loan Documents. The Subordinated Lender and the Companies desire to enter into this Agreement in order to induce the Senior Lenders to enter into the Credit Agreement. The Subordinated Lender acknowledges that the Senior Lenders would not enter into the Senior Loan Documents but for the execution of this Agreement.

In consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. Definitions. Except as otherwise provided herein, all capitalized terms used in this Agreement shall have the meanings ascribed to such terms in the Credit Agreement, provided that the following terms shall have the meanings set forth below:

"Bankruptcy Code" means Title 11 of the United States Code (11 U.S.C. Section 101 et. seq.) or any replacement or supplemental federal statute dealing with the bankruptcy of debtors.

"Company" and "Companies" shall have the meaning set forth in the preamble hereof.

"Company Property" means all assets, property and property rights, of any kind or nature, tangible or intangible, now or hereafter existing, in which either Company or any Obligor owns, asserts or maintains an interest.

"Credit Agreement" shall have the meaning set forth in the recitals hereof.

"Finally Paid" or "Final Payment," when used in connection with the Senior

Indebtedness, means the full and indefeasible payment in cash of all of the Senior Indebtedness and the irrevocable termination of all Commitments of all the Senior Lenders under the Senior Loan Documents.

"Liens" means any mortgage, deed of trust, pledge, lien, security interest, charge, set-off right or other encumbrance, whether now existing or hereafter created, acquired or arising.

"Obligor" means any guarantor or obligor of any Senior Indebtedness.

"Proceeding" means any voluntary or involuntary proceeding commenced by or against either Company or any Obligor under any provision of the Bankruptcy Code, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with its creditors, or proceedings seeking dissolution, receivership, reorganization, arrangement, or other similar relief.

"Senior Agent" means LaSalle Bank National Association, as Administrative Agent for Senior Lenders, or any other Person appointed by the holders of the Senior Indebtedness as administrative agent for purposes of the Senior Loan Documents and this Agreement, together with the successors and assigns of all of the foregoing.

"Senior Indebtedness" means all obligations, liabilities and indebtedness of every nature of either Company or any Obligor from time to time owed to the Senior Agent or any Senior Lender under the Senior Loan Documents, including the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all premium, fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable, whether before or after the filing of a Proceeding,

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including any Hedging Obligations and Bank Product Obligations at any time due and owing to any Senior Lender, together with (a) any indebtedness which refinances such principal, interest or other obligations and any amendments, modifications, renewals, restatements, refinancings or extensions thereof and (b) any interest accruing thereon after the commencement of a Proceeding, without regard to whether or not such interest is allowed in any Proceeding. Senior Indebtedness shall be deemed to be outstanding until it is Finally Paid.

"Senior Loan Documents" means the Credit Agreement, the other Loan Documents and all other agreements, documents and instruments executed from time to time in connection therewith, in each case as from time to time renewed, extended, amended, restated or modified and all agreements and instruments evidencing full or partial refundings or refinancings of the indebtedness thereunder.

"Subordinated Indebtedness" means all obligations, liabilities and indebtedness of every nature of either Company or any Obligor from time to time owed to the Subordinated Lender under the Subordinated Documents, including the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all premium, fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable under or in respect of the Subordinated Documents, whether before or after the filing of a Proceeding (including any amounts payable by either Company or any Obligor in connection with put, redemption, repurchase or repurchase rights under any warrants or any Capital Securities of either Company or any Obligor held by the Subordinated Lender), together with (a) any amendments, modifications, renewals, restatements, refinancings or extensions thereof and (b) any interest accruing thereon after the commencement of a Proceeding, without regard to whether or not such interest is allowed in any Proceeding.

"Subordinated Lender Remedies" means any action (a) to take from or for the account of either Company, any Obligor, any other guarantor of the Subordinated Indebtedness or any other Person, by set-off or in any other manner, the whole or any part of any moneys which may now or hereafter be owing by either Company (other than receipt of payments of Subordinated Indebtedness to the extent permitted by this Agreement), any Obligor, any such guarantor or any other Person with respect to the Subordinated Indebtedness, (b) to sue for payment of, or to initiate or participate with others in any suit, action or proceeding (including any Proceeding) against either Company, any Obligor, any

such guarantor or any other Person to (i) enforce payment of or to collect the whole or any part of the Subordinated Indebtedness or (ii) commence judicial enforcement of any of the rights and remedies under the Subordinated Documents or applicable law with respect to the Subordinated Indebtedness, (c) to accelerate the Subordinated Indebtedness, (d) to exercise any put, repurchase or similar option or to cause either Company, any Obligor, any such guarantor or any other Person to honor any redemption or mandatory prepayment obligation under any Subordinated Document or (e) to take any action under the provisions of any state or federal law, including the UCC, or under any contract or agreement, to enforce, foreclose upon, take possession of or sell any Company Property or any property or assets of any such guarantor or any other Person.

"Subordinated Lender" shall have the meaning set forth in the preamble hereof.

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"Subordinated Note" shall have the meaning set forth in the recitals hereof.

"UCC" means Article 9 of the Uniform Commercial Code, as in effect in any relevant jurisdiction.

2. Subordination of Subordinated Indebtedness to Senior Indebtedness. Each Company covenants and agrees, and the Subordinated Lender by its acceptance of the Subordinated Documents (whether upon original issue or upon transfer or assignment) likewise covenants and agrees, notwithstanding anything to the contrary contained in any of the Subordinated Documents, that the payment of any and all of the Subordinated Indebtedness shall be subordinate and subject in right and time of payment, to the extent and in the manner hereinafter set forth, to the Final Payment of all Senior Indebtedness; provided that the foregoing shall in no way limit the ability of each company to pay the amounts detailed in the proviso to Section 6 below. Each holder of Senior Indebtedness, whether now outstanding or hereafter created, incurred, assumed or guaranteed, shall be deemed to have acquired Senior Indebtedness in reliance upon the provisions contained in this Agreement.

### 3. Subordination of Liens.

(a) The Subordinated Lender hereby covenants and agrees that any Liens and rights of any kind the Subordinated Lender may now have and hereafter acquire (or be deemed to now have or hereafter acquire) against either Company or any Obligor and/or any Company Property, if any, shall be subordinate and subject to the Liens and rights against either Company, Obligors and/or Company Property of the Senior Lenders arising from or out of the Senior Indebtedness, regardless of the order, time or manner in which any Liens attach to or are perfected in any Company Property.

(b) If (x) either Company or any Obligor, as the case may be, desires to make any distribution or payment or to sell any Company Property as to which the Senior Lenders have provided their written consent or which is otherwise permitted under the Senior Loan Documents or (y) the Senior Lenders release their Lien in connection with any sale or disposition of any Company Property, the Subordinated Lender shall be deemed to have consented to such disposition and shall execute such releases with respect to such Company Property to be sold as the Senior Agent or the Senior Lenders request to evidence the release of any Lien against such property the Subordinated Lender may have or be deemed to have. The Subordinated Lender hereby irrevocably appoints the holders of the Senior Indebtedness, or the Senior Agent on their behalf, as the true and lawful attorneys of the Subordinated Lender for the purpose of executing and filing any such releases. The Subordinated Lender hereby waives any rights the Subordinated Lender has or may have in the future to object to the appointment of a receiver for all or any portion of the equity or the assets of either Company or any Obligor or to require any Senior Lender to marshal the collateral and agrees that each Senior Lender may proceed against the collateral in any order that it deems appropriate in the exercise of its absolute discretion.

### 4. Warranties and Representations of Companies and Subordinated Lender.

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(a) Each Company and the Subordinated Lender hereby severally represent and warrant to the Senior Lenders that each Senior Lender has been furnished



with a true and correct copy of all instruments and securities in existence as of the date hereof evidencing or pertaining to the Subordinated Indebtedness.

(b) Each Company hereby represents and warrants to the Senior Lenders that this Agreement has been duly executed and delivered by each Company and constitutes a legal, valid and binding obligation of each Company enforceable in accordance with its terms except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect affecting generally the enforcement of creditors' rights and remedies and general principles of equity.

(c) The Subordinated Lender represents and warrants to the Senior Lenders: (i) that this Agreement has been duly executed and delivered by the Subordinated Lender and constitutes a legal, valid and binding obligation of the Subordinated Lender enforceable against the Subordinated Lender in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws from time to time in effect affecting generally the enforcement of creditors' rights and remedies and general principles of equity, (ii) that the Subordinated Lender has not relied and shall not rely on any representation or information of any nature made by or received from any Senior Lender relative to either Company or any Obligor in deciding to execute this Agreement or to permit it to continue in effect (iii) that the Subordinated Lender is the current holder of the Subordinated Indebtedness.

(d) Notwithstanding anything contained in this Agreement to the contrary, the Subordinated Lender hereby represents and warrants to the Senior Agent and each Company that the Subordinated Lender has no security interest in or Lien on any assets of either Company or any Obligor or any Company Property.

5. Negative Covenants. Until all of the Senior Indebtedness has been Finally Paid: (A) the Subordinated Lender shall not demand, accept or acquire from either Company or any Obligor any security interest in or Lien on any assets of either Company or any Obligor or any Company Property, nor any collateral from either Company or any Obligor; (B) neither Company shall discharge the Subordinated Indebtedness other than in accordance with the terms of the Subordinated Documents; (C) the Subordinated Lender shall not demand or accept from either Company, any Obligor or other Person any consideration which would result in a discharge of the Subordinated Indebtedness; (D) the Subordinated Lender shall not hereafter give any subordination in respect of the Subordinated Indebtedness; and (E) neither Company shall hereafter issue any instrument, security or other writing evidencing any part of the Subordinated Indebtedness, and the Subordinated Lender shall not receive any such writing, except upon the condition that such security shall bear the legend referred to in Section 25 below and a true copy thereof shall be thereupon promptly furnished to the Senior Agent.

6. Permitted Payments. Notwithstanding the terms of the Subordinated Documents, each Company hereby agrees that it shall not make (and will not permit any other Obligor to make), and the Subordinated Lender hereby agrees that it will not accept, any payment or

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distribution with respect to the Subordinated Indebtedness including any payment or distribution received through the exercise of any right of setoff, counterclaim or crossclaim, until the Senior Indebtedness is Finally Paid; provided that the Companies may make to the Subordinated Lender and the Subordinated Lender may accept payments in kind (but not in cash) in respect of interest on the Subordinated Indebtedness, all on a non-accelerated basis and in accordance with the terms of the Subordinated Documents.

7. Forbearance of Legal Remedies.

(a) Until the Senior Indebtedness is Finally Paid, the Subordinated Lender shall not, without the prior written consent of the Senior Agent, exercise any Subordinated Lender Remedies.

(b) Notwithstanding anything contained herein to the contrary or any rights or remedies available to the Subordinated Lender under any of the Subordinated Documents, applicable law or otherwise, prior to the time that the Senior Indebtedness has been Finally Paid, any payments, distributions or other proceeds obtained by the Subordinated Lender from the exercise of any

Subordinated Lender Remedies shall in any event be held in trust by it for the benefit of the Senior Agent and the Senior Lenders and promptly paid or delivered to the Senior Agent for the benefit of the Senior Lenders in the form received.

8. Dissolution, Liquidation, Reorganization or Bankruptcy. (a) In the event of any Proceeding involving either Company or any Obligor:

(i) all Senior Indebtedness shall be Finally Paid before the Subordinated Lender shall be entitled to receive any payment on account of any Subordinated Indebtedness; and

(ii) any payment or distribution of assets of such Person of any kind or character, whether in cash, property or securities, to which the Subordinated Lender would be entitled except for these provisions, shall be paid by the liquidating trustee or agent or other Person making such payment or distribution directly to the Senior Agent, to the extent necessary to make Final Payment of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution or provision therefor to the holders of such Senior Indebtedness. The Subordinated Lender irrevocably authorizes, empowers and directs any debtor, debtor-in-possession, receiver, trustee or agent or other person having authority, to pay or otherwise deliver all such payments or distributions to Senior Agent.

(b) Until the Senior Indebtedness has been Finally Paid, if a Proceeding shall occur and be continuing, the Subordinated Lender shall file all claims it may have against either Company or any Obligor, and shall direct the debtor in possession or trustee in bankruptcy, as appropriate, to pay over to the Senior Agent all amounts due to the Subordinated Lender on account of the Subordinated Indebtedness until the Senior Indebtedness has been Finally Paid. If the Subordinated Lender fails to file such claims or to vote such claims prior to 30 days before the expiration of time to do so, the Senior Agent may (but shall have no obligation to) file and/or vote such claims in the Subordinated Lender's name on behalf of the Senior Lenders. If the

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Senior Agent votes any such claim in accordance with the authority granted hereof, the Subordinated Lender shall not be entitled to withdraw or change such vote.

(c) The Subordinated Lender agrees, in connection with any such Proceeding, that while it shall retain the right to vote and otherwise act in any such proceeding (including the right to vote to accept or reject any plan of partial or complete liquidation, reorganization, arrangement, composition or extension), it will not take any action or vote in any way so as to (i) contest the validity of the Liens securing the Senior Indebtedness, (ii) contest the enforceability of any of the Senior Loan Documents, (iii) contest the Senior Lenders' priority position over the Subordinated Lender created by this Agreement or (iv) take any position or action which would have directly or indirectly any of the following effects: (A) extension of the final maturity of and/or forgiveness, reduction or cram-down of the Senior Indebtedness or deferral of any required payment in respect of Senior Indebtedness, (B) opposing or objecting to initiatives or claims by the Senior Lenders for adequate protection or relief from the automatic stay, use of cash collateral or super-priority expense of administration for failure of adequate protection, (C) challenging in any respect treatment of the Senior Indebtedness as a first priority perfected fully secured claim, (D) blocking current payment of any obligation in respect of Senior Indebtedness, (E) assenting to or supporting any requested extension of the exclusivity period for the submission by Company of any plan of reorganization or liquidation under the Bankruptcy Code unless such extension is assented to or supported by the Senior Lenders; and (F) opposing or objecting to any sale or lease of any Company Property that has been consented to by the holders of Senior Indebtedness. In the event of any violation of any provisions of this section by the Subordinated Lender, the Senior Lenders may in the name of the Subordinated Lender, or in their own name thereafter amend, modify or rescind any such prior act taken or vote issued, in violation of this Agreement.

(d) Until the Senior Indebtedness has been Finally Paid, if a Proceeding shall occur and be continuing, the Subordinated Lender hereby (i) expressly consents to any Senior Lender's providing post-petition financing to either Company or any Obligor or the granting by either Company or any Obligor to any Senior Lender of senior liens and priorities in connection therewith and/or the

use of cash collateral and (ii) agrees that adequate notice of such financing or cash collateral usage to the Subordinated Lender shall have been provided if the Subordinated Lender received notice in accordance with Section 16 hereof 2 Business Days prior to the entry of any order approving such financing or cash collateral usage.

(e) If the Subordinated Lender has or at any time acquires any security interest or Lien for the Subordinated Indebtedness, the Subordinated Lender agrees not (i) to initiate any proceeding involving the marshalling of any Company Property (whether in a Proceeding or otherwise) or (ii) to assert any right it may have to "adequate protection" of its interest, if any, in such security in any Proceeding and agrees that it will not seek to have the automatic stay lifted with respect to such security, in each case without the prior written consent of the Senior Agent (not to be unreasonably withheld or delayed). The Subordinated Lender waives any claim or defense the Subordinated Lender may now or hereafter have arising out of the election by any Senior Lender in any Proceeding instituted under Chapter 11 of the Bankruptcy Code of any use of cash collateral, any borrowing or any grant of a security interest under Sections 363 and/or 364 of the Bankruptcy Code by either Company or any Obligor, as debtor-in-possession. The

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Subordinated Lender agrees that it will not object to or oppose a sale or other disposition of any property securing all or any part of the Senior Indebtedness free and clear of any security interests or other Liens or other claims of the Subordinated Lender under Section 363 of the Bankruptcy Code if the Senior Agent has consented to such sale or disposition. The Subordinated Lender further agrees that it will not seek to participate on any creditors committee without the Senior Agent's prior written consent. To the extent that any Senior Lender receives payments on, or proceeds of collateral for, the Senior Indebtedness which are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law, or equitable cause, then as between such Senior Lender and the Subordinated Lender hereunder, to the extent of such payment or proceeds received, the Senior Indebtedness, or part thereof, intended to be satisfied shall be revived and continue in full force and effect as if such payments or proceeds had not been received by such Senior Lender.

9. Obligation of Company Unconditional. Nothing contained herein or in the Senior Loan Documents is intended to or shall impair, as between either Company and the Subordinated Lender only, the obligation of the Companies, which is absolute and unconditional, to pay to the Subordinated Lender the Subordinated Indebtedness as and when the same shall become due and payable in accordance with their terms, or to affect the relative rights of the Subordinated Lender and creditors of the Companies other than the Senior Lenders.

10. Subordination Rights Not Impaired by Acts or Omissions of either Company or Holders of Senior Indebtedness.

(a) No right of any present or future holders of any Senior Indebtedness to enforce the subordination provisions as provided herein shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of either Company; by any act or failure to act by any such holder; by any act or failure to act by any other holder of the Senior Indebtedness; or by any noncompliance by either Company with the terms hereof, regardless of any knowledge thereof which any such holder may have or be otherwise charged with. The Subordinated Lender shall not be released, nor shall the Subordinated Lender's obligation hereunder be in anyway diminished, by any of the following: (i) the exercise or the failure to exercise by any Senior Lender of any rights or remedies conferred on it or them under the Senior Loan Documents, hereunder or existing at law or otherwise, or against any Company Property; (ii) the commencement of an action at law or the recovery of a judgment at law against either Company or any Obligor for the performance of the Senior Indebtedness and the enforcement thereof through levy or execution or otherwise; (iii) the taking or institution or any other action or proceeding against either Company or any Obligor; (iv) any delay in taking, pursuing, or exercising any of the foregoing actions, rights, powers, or remedies (even though requested by the Subordinated Lender) by any Senior Lender or anyone acting for any Senior Lender; (v) any lack of validity or enforceability of any Senior Loan Document; (vi) the release or non-perfection of any collateral securing the Senior Indebtedness; or (vii) any other circumstance which might otherwise constitute a defense available to,

or a discharge of, either Company or any Obligor in respect of the Senior Indebtedness or Subordinated Lender in respect of this Agreement (other than the Final Payment of the Senior Indebtedness).

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(b) Without limiting the generality of the foregoing, and anything else contained herein to the contrary notwithstanding, any Senior Lender, from time to time, without prior notice to or the consent of the Subordinated Lender, may take all or any of the following actions without in any manner affecting or impairing the obligation or liability of the Subordinated Lender hereunder: (i) obtain a Lien in any property to secure any of the Senior Indebtedness; (ii) obtain the primary and secondary liability of any party or parties with respect to any of the Senior Indebtedness; (iii) renew, extend, or otherwise change the time for payment of the Senior Indebtedness or any installment thereof for any period, or change the interest rates and fees with respect to the Senior Indebtedness; (iv) renew, reaffirm, extend, release or otherwise change any liability of any nature of any person or entity, including any Obligor, with respect to the Senior Indebtedness; (v) exchange, enforce, waive, release, and apply any Company Property and direct the order or manner of sale thereof as such Senior Lender may in its discretion determine; (vi) enforce its rights hereunder, whether or not such Senior Lender shall proceed against any other Person; (vii) exercise its rights to consent to any action or non-action of either Company or any Obligor which may violate the covenants and agreements contained in the Senior Loan Documents, with or without consideration, on such terms and conditions as may be acceptable to it; or (viii) exercise any of its rights conferred by the Senior Loan Documents or by law.

11. Waivers. Each Company and the Subordinated Lender hereby waive, to the fullest extent permitted by law, any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy of specific performance of this Agreement in any action brought therefor by the Senior Lenders. To the fullest extent permitted by law and except as to any notices specified in this Agreement, notices regarding the intended sale or disposition of any portion of the collateral held by the Senior Lenders, or any notice which may not be waived in accordance with the UCC, each Company and the Subordinated Lender hereby further waive: (a) presentment, demand, protest, notice of protest, notice of default or dishonor, notice of payment or nonpayment and any and all other notices and demands of any kind in connection with all negotiable instruments evidencing all or any portion of the Senior Indebtedness or the Subordinated Indebtedness to which the Companies or the Subordinated Lender may be a party; (b) prior notice of and consent to any loans made, extensions granted or other action taken in reliance thereon; and (c) all other demands and notices of every kind in connection with this Agreement, the Senior Indebtedness or the Subordinated Indebtedness. The Subordinated Lender consents to any release, renewal, extension, compromise or postponement of the time of payment of the Senior Indebtedness, to any substitution, exchange or release of collateral therefor, and to the addition or release of any person primarily or secondarily liable thereon.

12. No Estoppel. Neither the failure nor any delay on the part of any Senior Lender to exercise any right, remedy, power or privilege hereunder shall operate as a waiver thereof or give rise to an estoppel, nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then only to the extent specifically stated in such writing.

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13. Incorrect Payments; Specific Performance. If either Company or any Obligor shall make or the Subordinated Lender shall collect any payment on account of the principal of, premium or interest on or any other amounts due under the Subordinated Indebtedness in contravention of this Agreement, such payments shall be held in trust by the Subordinated Lender and not commingled with any assets of the Subordinated Lender and shall be paid over and delivered to the Senior Agent, for the benefit of the Senior Lenders, promptly upon receipt thereof. At any time the Subordinated Lender fails to comply with any provision of this Agreement, the Senior Lenders may demand specific performance of this Agreement, whether or not either Company has complied with this Agreement, and may exercise any other remedy available at law or equity.

14. Amendment of the Subordinated Documents and Senior Loan Documents. The Subordinated Lender agrees that it will not, without the prior written consent of the Senior Agent, agree to any amendment, modification, waiver or supplement to the Subordinated Documents. The Senior Indebtedness may at any time be amended, extended, modified, restated, refinanced or waived without limitation, without notice to, or the consent of, the Subordinated Lender.

15. Inconsistent or Conflicting Provisions; Construction. If a provision of the Senior Loan Documents or the Subordinated Documents is inconsistent or conflicts with the provisions of this Agreement, the provisions of this Agreement shall govern and prevail. The term "including" is not limiting and means "including without limitation." In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including"; the words "to" and "until" each mean "to but excluding", and the word "through" means "to and including."

16. Notices. Any notice, consent or other communication provided for in this Agreement shall be in writing and shall be delivered personally (effective upon delivery), via facsimile (effective upon confirmation of transmission), via overnight courier (effective the next Business Day after dispatch if instructed to deliver on next business day) or via U.S. Mail (effective 3 days after mailing, postage prepaid, first class) to each party at its address(es) and/or facsimile number(s) set forth on Annex I hereto, or to such other address as either party shall specify to the other in writing from time to time. The Subordinated Lender shall provide the Senior Agent with written notice promptly upon the occurrence of an event of default under the Subordinated Documents.

17. Entire Agreement. This Agreement constitutes and expresses the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, whether express or implied, oral or written. Neither this Agreement nor any portion or provision hereof may be changed, waived or amended orally or in any manner other than by an agreement in writing signed by the Senior Agent and the Subordinated Lender; provided that any such change, waiver or amendment shall be binding upon each Company by their written consent thereto. This Agreement shall constitute a Loan Document and the recitals hereto shall constitute part of this Agreement.

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18. Additional Documentation. Each Company and the Subordinated Lender shall execute and deliver to the Senior Agent such further instruments and shall take such further action (in each case, at the cost of the Companies) as the Senior Agent may at any time or times reasonably request in order to carry out the provisions and intent of this Agreement.

19. Expenses. The Companies, joint and severally, agree to pay the Senior Agent and the Senior Lenders on demand all expenses of every kind, including Attorney Costs, that the Senior Agent or the Senior Lenders incur in enforcing any of their rights against either Company and/or the Subordinated Lender under this Agreement.

20. Successors and Assigns.

(a) This Agreement shall inure to the benefit of each Senior Lender, the Subordinated Lender, and their respective successors and assigns, and shall be binding upon each Company and its successors and assigns, and each Senior Lender, the Subordinated Lender and their respective transferees, successors and assigns, including any subsequent holders of the Subordinated Note. Any Senior Lender, without prior notice or consent of any kind, may sell, assign or transfer any Senior Indebtedness, and in such event each and every immediate and successive assignee or transferee thereof may be given the right by such Person to enforce this Agreement in full against each Company and the Subordinated Lender, by suit or otherwise, for its own benefit.

(b) The Subordinated Lender shall not sell, assign, pledge, dispose of or otherwise transfer all or any portion of the Subordinated Indebtedness or any Subordinated Document without the prior written consent of the Senior Agent which consent shall not be unreasonably withheld or delayed.

(c) Notwithstanding the failure of any transferee to execute or deliver an agreement substantially identical to this Agreement, the subordination effected hereby shall survive any sale, assignment, pledge, disposition or other transfer

of all or any portion of the Subordinated Indebtedness, and the terms of this Agreement shall be binding upon the successors and assigns of each Subordinated Indebtedness, as provided in this Section 20.

(d) The Subordinated Lender hereby agrees that any party that refinances the Senior Indebtedness of the Senior Lenders may rely on and enforce this Agreement as if it were such Senior Lender. The Subordinated Lender further hereby agrees that it will, at the request of such Senior Lender, enter into an agreement, in the form of this Agreement, *mutatis mutandis*, to subordinate the Subordinated Indebtedness, to the same extent as provided herein, to the party refinancing all or a portion of such Senior Indebtedness; provided that the failure of the Subordinated Lender to execute such an agreement shall not affect such party's right to rely on and enforce the terms of this Agreement.

21. Covenant Not to Challenge. This Agreement has been negotiated by the parties with the expectation and in reliance upon the assumption that the instruments and documents evidencing the Senior Indebtedness are valid and enforceable. In determining whether to enter into this Agreement, the Subordinated Lender has assumed such validity and enforceability, and

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has agreed to the provisions contained herein, without relying upon any reservation of a right to challenge or call into question such validity or enforceability. As between any Senior Lender and the Subordinated Lender, the Subordinated Lender hereby covenants and agrees, to the fullest extent permitted by law, that it shall not initiate in any proceeding a challenge to the validity or enforceability of the documents and instruments evidencing the Senior Indebtedness or the validity, perfection or priority of any Lien of the Senior Agent or the Senior Lenders securing the Senior Indebtedness, nor shall the Subordinated Lender instigate other parties to raise any such challenges, nor shall the Subordinated Lender participate in or otherwise assert any such challenges which are raised by other parties.

22. Subrogation. Subject to the Final Payment of all Senior Indebtedness and the provisions of Section 24 hereof, the Subordinated Lender shall be subrogated to the rights of the Senior Lenders to receive payments and distributions of cash, property and securities applicable to the Senior Indebtedness to the extent that distributions otherwise payable to the Subordinated Lender have been applied to the Senior Indebtedness, until all amounts payable under the Subordinated Indebtedness shall have been paid in full. For purposes of such subrogation, no payments or distributions to the Senior Lenders of any cash, property or securities to which the Subordinated Lender would be entitled except for the provisions of this Agreement, and no payment pursuant to the provisions of this Agreement to the Senior Lenders by the Subordinated Lender shall, as among the Companies and their creditors other than the Senior Lenders, be deemed to be a payment or distribution by either Company to or on account of the Senior Indebtedness. If either Company fails to make any payment on account of the Subordinated Indebtedness by reason of any provision contained herein, such failure shall, notwithstanding such provision contained herein, constitute a default with respect to the Subordinated Indebtedness if and to the extent such failure would otherwise constitute such a default in accordance with the terms of the Subordinated Indebtedness.

23. Termination of Agreement. This Agreement shall continue and shall be irrevocable until the date all of the Senior Indebtedness has been Finally Paid or otherwise discharged and released in an express writing to such effect by the Senior Lenders.

24. Reinstatement. The obligations of the Subordinated Lender under the Agreement shall continue to be effective, or be reinstated, as the case may be, if at any time any payment in respect of any Senior Indebtedness is rescinded or must otherwise be restored or returned by any Senior Lender by reason of any bankruptcy, reorganization, arrangement, composition or similar proceeding or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, either Company, any Obligor or any substantial part of its property, or otherwise, all as though such payment had not been made.

25. Legends. Until the termination of this Agreement, the Subordinated Lender will cause to be clearly, conspicuously and prominently inserted (or otherwise attached thereto) on the face of the Subordinated Note and any other Subordinated Document, as well as any renewals or replacements thereof, the following legend:

"THIS INSTRUMENT AND THE RIGHTS AND OBLIGATIONS EVIDENCED HEREBY ARE SUBORDINATE IN THE MANNER AND TO

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THE EXTENT SET FORTH IN THAT CERTAIN SUBORDINATION AND INTERCREDITOR AGREEMENT (THE "SUBORDINATION AGREEMENT") DATED AS OF OCTOBER 7, 2003 AMONG ARGENT FUND MANAGEMENT LTD., AKORN, INC., A LOUISIANA CORPORATION ("AKORN"), AND AKORN (NEW JERSEY), INC., AN ILLINOIS CORPORATION ("AKORN NJ"; TOGETHER WITH AKORN, EACH A "COMPANY" AND COLLECTIVELY THE "COMPANIES") AND LASALLE BANK NATIONAL ASSOCIATION (TOGETHER WITH ITS SUCCESSORS AND ASSIGNS, THE "SENIOR AGENT"), TO THE INDEBTEDNESS (INCLUDING INTEREST) OWED BY THE COMPANIES PURSUANT TO THAT CERTAIN CREDIT AGREEMENT DATED AS OF OCTOBER 7, 2003 AMONG THE COMPANIES, THE SENIOR AGENT AND THE LENDERS FROM TIME TO TIME PARTY THERETO, AND THE OTHER LOAN DOCUMENTS (AS DEFINED IN THE CREDIT AGREEMENT) AS SUCH CREDIT AGREEMENT AND OTHER LOAN DOCUMENTS MAY BE AMENDED, RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME AND TO INDEBTEDNESS REFINANCING THE INDEBTEDNESS THEREUNDER AS CONTEMPLATED BY THE SUBORDINATION AGREEMENT; AND EACH HOLDER OF THIS INSTRUMENT, BY ITS ACCEPTANCE HEREOF, IRREVOCABLY AGREES TO BE BOUND BY THE PROVISIONS OF THE SUBORDINATION AGREEMENT."

Each Company's relevant books shall be marked to evidence the subordination of all of the Subordinated Indebtedness to the holders of Senior Indebtedness, in accordance with the terms of this Agreement. Each Senior Lender is authorized to examine such books from time to time in accordance with the terms of the Credit Agreement and to make any notations required by this Agreement.

26. Governing Law. THIS AGREEMENT SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF ILLINOIS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES. EACH COMPANY AND THE SUBORDINATED LENDER HEREBY AGREE THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY EACH COMPANY OR THE SUBORDINATED LENDER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT SHALL BE LITIGATED IN A COOK COUNTY, ILLINOIS COURT OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF ANY SENIOR LENDER INITIATES SUCH ACTION, IN ADDITION TO THE FOREGOING COURTS, ANY COURT IN WHICH SUCH SENIOR LENDER SHALL INITIATE SUCH ACTION, TO THE EXTENT SUCH COURT HAS JURISDICTION. EACH COMPANY AND THE SUBORDINATED LENDER HEREBY EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY ANY SENIOR LENDER AND HEREBY WAIVE ANY CLAIM THAT SUCH COURTS ARE AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED

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UPON LACK OF VENUE. THE EXCLUSIVE CHOICE OF FORUM AS SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY ANY SENIOR LENDER, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY ANY SENIOR LENDER, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND EACH COMPANY AND THE SUBORDINATED LENDER HEREBY WAIVE THE RIGHT TO COLLATERALLY ATTACK SUCH JUDGMENT OR ACTION.

27. Jury Trial. THE SENIOR AGENT, THE SUBORDINATED LENDER AND EACH COMPANY WAIVE TRIAL BY JURY IN ANY DISPUTE ARISING FROM, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

28. Severability. The provisions of this Agreement are independent of and separable from each other. If any provision hereof shall for any reason be held invalid or unenforceable, it is the intent of the parties that such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof, and that this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

29. Counterparts. This Agreement may be executed in any number of separate counterparts, all of which, when taken together, shall constitute one and the same instrument, notwithstanding the fact that all parties did not sign the same counterpart. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof.

30. Sections. The section headings used in this Agreement are for convenience only and shall not affect the interpretation of any of the provisions hereof.

31. Defines Rights of Creditors. The provisions of this Agreement are solely for the purpose of defining the relative rights of the Senior Lenders and the Subordinated Lender and shall not be deemed to create any rights or priorities in favor of any other Person, including each Company.

[signature pages follow]

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The parties hereto have executed this Agreement as of the date first above written.

COMPANIES: AKORN, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

AKORN (NEW JERSEY), INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SENIOR AGENT: LASALLE BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SUBORDINATED LENDER: ARGENT FUND MANAGEMENT LTD.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ANNEX I

NOTICE ADDRESSES

COMPANIES:

c/o Akorn, Inc.  
2500 Milbrook Drive  
Buffalo Grove, Illinois 60089  
Attention: Chief Financial Officer  
Facsimile: (847) 279-6123

SENIOR AGENT:

LaSalle Bank National Association



135 South LaSalle Street  
Chicago, Illinois 60603  
Attention: Patrick O'Toole  
Facsimile: (312) 904-0522

SUBORDINATED LENDER:

Argent Fund Management Ltd.

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Attention: -----

Facsimile: -----

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Arthur S. Przybyl, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Akorn, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - A) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
  - B) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report, based on such evaluation; and
  - C) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - A) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which could adversely affect the registrant's ability to record, process, summarize and report information; and
  - B) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 19, 2003

/s/ ARTHUR S. PRZYBYL

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Name: Arthur S. Przybyl  
Title: Chief Executive Officer

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Bernard J. Pothast, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Akorn, Inc.;
2. Based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - A) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report is being prepared;
  - B) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report, based on such evaluation; and
  - C) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - A) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which could adversely affect the registrant's ability to record, process, summarize and report information; and
  - B) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 19, 2003

/s/ BERNARD J. POTHAST

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Name: Bernard J. Pothast  
Title: Chief Financial Officer

CERTIFICATION PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Akorn, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2003, as filed with the Securities and Exchange Commission and to which this Certification is an exhibit (the "Report"), the undersigned officer of Akorn, Inc. does hereby certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

(1) Except as disclosed in the Explanatory Note on page 2 of the Report, the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 19, 2003

/s/ ARTHUR S. PRZYBYL

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Arthur S. Przybyl  
Chief Executive Officer

CERTIFICATION PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of Akorn, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2003, as filed with the Securities and Exchange Commission and to which this Certification is an exhibit (the "Report"), the undersigned officer of Akorn, Inc. does hereby certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

(1) Except as disclosed in the Explanatory Note on page 2 of the Report, the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 19, 2003

/s/ BERNARD J. POTHAST

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Bernard J. Pothast  
Chief Financial Officer