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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE 13D
Under the Securities Exchange Act of 1934
(Amendment No. 12)*

Akorn, Inc.

(Name of Issuer)

Common Stock, no par value

(Title of Class of Securities)

009728 10 6

(Cusip Number)

John N. Kapoor
EJ Financial Enterprises, Inc.
225 E. Deerpath, Suite 250
Lake Forest, IL 60045

Copy To: Thomas J. Murphy
McDermott, Will & Emery
227 West Monroe Street
Chicago, IL 60606

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

October 7, 2003

(Date of Event Which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box / /.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the act (however, see the Notes).

SCHEDULE 13D

CUSIP No. 009728 10 6

1 Names of Reporting Persons: I.R.S. Identification Nos. of
John N. Kapoor Trust, dtd 9/20/89 Above Persons (entities only):

2 Check the Appropriate Box if a Member of a Group (See Instructions):
(a) / /
(b) / /

3 SEC Use Only:

4 Source of Funds (See Instruction):
00 (See Item 3)

5 Check if Disclosure of Legal Proceedings is Required Pursuant to
Items 2(d) or 2(e): / /

6 Citizenship or Place of Organization:
Illinois

7 Sole Voting Power:
24,126,699

Number of Shares
Beneficially
Owned by
Each
Reporting
Person
With

8 Shared Voting Power:
-0-

9 Sole Dispositive Power:
24,126,699

10 Shared Dispositive Power:
-0-

11 Aggregate Amount Beneficially Owned by Each Reporting Person:
24,126,699

12 Check if the Aggregate Amount in Row (11) Excludes Certain Shares
(See Instructions): / /

13 Percent of Class Represented by Amount in Row (11):
56.0%

14 Type of Reporting Person (See Instructions):
00

CUSIP No. 009728 10 6

1 Names of Reporting Persons: I.R.S. Identification Nos. of
John N. Kapoor Above Persons (entities only):

2 Check the Appropriate Box if a Member of a Group (See Instructions):
(a) / /

3 SEC Use Only:

4 Source of Funds (See Instruction):

5 Check if Disclosure of Legal Proceedings is Required Pursuant to
Items 2(d) or 2(e): / /

6 Citizenship or Place of Organization:
USA

7 Sole Voting Power:
24,622,637

Number of Shares
Beneficially
Owned by
Each
Reporting
Person
With

8 Shared Voting Power:
3,395,000

9 Sole Dispositive Power:
24,622,637

10 Shared Dispositive Power:
3,395,000

11 Aggregate Amount Beneficially Owned by Each Reporting Person:
28,017,637

12 Check if the Aggregate Amount in Row (11) Excludes Certain Shares
(See Instructions) /X/

13 Percent of Class Represented by Amount in Row (11):
64.4% (See Item 5(a) (i))

14 Type of Reporting Person (See Instructions):
IN

CUSIP No. 009728 10 6

1 Names of Reporting Persons: I.R.S. Identification Nos. of
EJ Financial/Akorn Management, L.P. Above Persons (entities only):

2 Check the Appropriate Box if a Member of a Group (See Instructions):
(a) / /
(b) / /

3 SEC Use Only:

4 Source of Funds (See Instruction):
OO

5 Check if Disclosure of Legal Proceedings is Required Pursuant to
Items 2(d) or 2(e): / /

6 Citizenship or Place of Organization:
Illinois

7 Sole Voting Power:
3,395,000

Number of Shares
Beneficially
Owned by
Each
Reporting
Person
With
8 Shared Voting Power:
-0-

9 Sole Dispositive Power:
3,395,000

10 Shared Dispositive Power:
-0-

11 Aggregate Amount Beneficially Owned by Each Reporting Person:
3,395,000

12 Check if the Aggregate Amount in Row (11) Excludes Certain Shares
(See Instructions): / /

13 Percent of Class Represented by Amount in Row (11):
17.2%

14 Type of Reporting Person (See Instructions)
PN

CUSIP No. 009728 10 6

1 Names of Reporting Persons: I.R.S. Identification Nos. of
Pharma Nevada, Inc. Above Persons (entities only):

2 Check the Appropriate Box if a Member of a Group (See Instructions):
(a) / /
(b) / /

3 SEC Use Only:

4 Source of Funds (See Instruction):
OO

5 Check if Disclosure of Legal Proceedings is Required Pursuant to
Items 2(d) or 2(e): / /

6 Citizenship or Place of Organization:
Illinois

7 Sole Voting Power:
3,395,000

Number of Shares
Beneficially
Owned by
Each
Reporting
Person
With
8 Shared Voting Power:
-0-

9 Sole Dispositive Power:

3,395,000

10 Shared Dispositive Power:
-0-

11 Aggregate Amount Beneficially Owned by Each Reporting Person:
3,395,000

12 Check if the Aggregate Amount in Row (11) Excludes Certain Shares
(See Instructions): / /

13 Percent of Class Represented by Amount in Row (11):
17.2%

14 Type of Reporting Person (See Instructions)
CO

CUSIP No. 009728 10 6

1 Names of Reporting Persons: Editha A. Kapoor I.R.S. Identification Nos. of
Above Persons (entities only):

2 Check the Appropriate Box if a Member of a Group (See Instructions):
(a) / /
(b) / /

3 SEC Use Only:

4 Source of Funds (See Instruction):

5 Check if Disclosure of Legal Proceedings is Required Pursuant to
Items 2(d) or 2(e): / /

6 Citizenship or Place of Organization:
USA

7 Sole Voting Power:
63,600

Number of Shares
Beneficially
Owned by
Each
Reporting
Person
With

8 Shared Voting Power:
3,395,000

9 Sole Dispositive Power:
63,600

10 Shared Dispositive Power:
3,395,000

11 Aggregate Amount Beneficially Owned by Each Reporting Person:
3,458,600

12 Check if the Aggregate Amount in Row (11) Excludes Certain Shares

(See Instructions): / /

13 Percent of Class Represented by Amount in Row (11):
17.5%

14 Type of Reporting Person (See Instructions)
IN

This Amendment No. 12 (the "Amendment") to Schedule 13D is being filed to disclose that on October 7, 2003 the John N. Kapoor Trust dated 9/20/89 (the "Trust"), along with other investors, consummated a recapitalization transaction (the "Transaction") involving Akorn, Inc. ("Akorn") by purchasing all of Akorn's outstanding senior debt from The Northern Trust Company. In return for its contribution, the Trust received from Akorn: 107,350 shares of Series A 6% Participating Convertible Preferred Stock, a subordinated note of Akorn in the principal amount of \$2,117,139.03, warrants to purchase 3,578,333 shares of Akorn common stock ("Shares") at \$1.00 per share and warrants to purchase 1,091,714 Shares at \$1.10 per share.

This Amendment is filed jointly by (i) the Trust, of which John N. Kapoor is trustee and sole beneficiary, (ii) John N. Kapoor, (iii) EJ Financial/Akorn Management, L.P., a Delaware limited partnership ("EJ/Akorn") of which Pharma Nevada, Inc. is the managing general partner, (iv) Pharma Nevada, Inc., a Nevada corporation wholly owned by John N. Kapoor and Editha A. Kapoor and of which John N. Kapoor serves as the president and chairman of the board of directors, and (v) Editha A. Kapoor, wife of John N. Kapoor (collectively, the "Reporting Persons").

ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION

The Trust funded its obligation to purchase the Participating Convertible Preferred Stock and warrants from its own assets and/or from borrowings.

The information set forth in Item 6 hereof is hereby incorporated by reference into this Item 3.

ITEM 4. PURPOSE OF TRANSACTION

The purpose of the Transaction was to reduce Akorn's outstanding senior bank debt and provide Akorn with additional working capital. The information set forth in Item 6 hereof is hereby incorporated by reference into this Item 4.

Both Dr. Kapoor and the Trust, as well as the other persons filing this Amendment No. 12, have acquired the Shares as an investment and intend to continue to review Akorn's business affairs and general economic and industry conditions. Based upon such review, persons named herein, will, on an on-going basis, evaluate various alternative courses of action including additional capital investments in Akorn. Alternatively, the persons filing this statement may sell all or a portion of their holdings in Akorn in the open market, subject to the requirements of Rule 144 or as otherwise permitted. Dr. Kapoor has held discussions with shareholders of Akorn regarding potential changes to the composition of Akorn's board of directors. These discussions are ongoing and may result in changes to Akorn's board of directors in the foreseeable future.

ITEM 5. INTEREST IN SECURITIES OF THE ISSUER

(a) As of the date hereof:

(i) John N. Kapoor beneficially owns (a) presently exercisable options to purchase 470,938 Shares representing 2.3% of

the Shares outstanding, (b) 25,000 Shares representing 0.1% of the Shares outstanding, (c) 24,126,699 Shares representing 56.0% of the Shares outstanding through the Trust, of which he is the sole trustee, (c) 3,395,000 Shares representing 17.2% of Shares outstanding through EJ/Akorn;

In accordance with the requirements for determining beneficial ownership of a class of securities pursuant to Schedule 13D, the above Akorn share ownership percentages are calculated assuming the conversion of all convertible securities and exercise of all warrants and options held by the Reporting Persons, but not of all outstanding convertible securities, warrants and options of Akorn eligible for conversion or exercise. If the above percentages were calculated on a fully diluted basis, after the conversion of all convertible securities and exercise of all warrants and options of Akorn, John N. Kapoor's ownership percentage of Akorn common stock would be reduced to approximately 38.4%.

(ii) the Trust beneficially owns (a) 851,800 Shares representing 4.3% of the Shares outstanding, (b) warrants allowing it to purchase up to 6,337,047 Shares representing 24.3% of the Shares outstanding, (c) convertible subordinated debt which is convertible into 2,426,900 Shares representing 10.9% of the Shares outstanding, (d) the right to convert interest accrued to date on \$2,000,000 of subordinated debt into 197,619 Shares representing 1.0% of the Shares outstanding, (e) 107,350 shares of Series A 6% Participating Convertible Preferred Stock convertible into 14,313,333 Shares representing 42.0% of Shares outstanding;

(iii) EJ/Akorn owns 3,395,000 Shares representing 17.2% of the Shares outstanding;

(iv) Pharma Nevada, Inc. owns 3,395,000 Shares representing 17.2% of the Shares outstanding through EJ/Akorn; and

(iv) Editha A. Kapoor beneficially owns (a) 63,600 Shares representing 0.3% of the Shares outstanding in her capacity as trustee of four trusts established for the benefit of the children of John Kapoor and Editha Kapoor (the "Childrens' Trust") and (c) 3,395,000 Shares representing 17.2% of Shares outstanding through EJ/Akorn.

(b) John N. Kapoor has sole voting and dispositive power over 24,622,637 Shares (comprised of the Shares, subordinated debt convertible to Shares, participating convertible preferred stock, options and warrants held by himself and the Trust) and shared dispositive and voting power over 3,395,000 Shares (comprised of Shares held by EJ/Akorn). The Trust, acting through its trustee, has sole voting and dispositive power over 24,126,699 Shares and does not share voting power or dispositive power over any other Shares. EJ/Akorn, acting through its managing general partner, has sole voting and dispositive power over 3,395,000 Shares and does not share voting power or dispositive power over any other Shares. Pharma Nevada, Inc. has sole voting and dispositive power over 3,395,000 Shares held through EJ/Akorn and does not share voting power or dispositive power over any other Shares. Editha A. Kapoor, as trustee of the Childrens' Trust, has sole voting and dispositive power over 63,600 Shares representing the shares held in the Childrens' Trust and shared dispositive and voting power over 3,395,000 Shares (comprised of Shares held by EJ/Akorn).

(c) Except for the transactions described in Item 6 below, which were effected in a privately negotiated transaction, there have been no transactions effected with respect to Shares since August 21, 2003 (the date of the last filing on Schedule 13D) by any of the Reporting Persons.

(d) Inapplicable.

(e) Inapplicable.

RESPECT TO SECURITIES OF THE ISSUER

The Reporting Persons acquired Shares in the Transaction as follows. On September 25, 2003, The Northern Trust Company, an Illinois banking corporation ("Northern Trust"), the certain purchasers identified therein, including the Trust (collectively, the "Purchasers"), Akorn and Akorn (New Jersey), Inc., an Illinois corporation ("Akorn New Jersey"), entered into an Assignment and Assumption Agreement (the "Assignment and Assumption Agreement") whereby the Purchasers agreed to purchase and assume all of Northern Trust's interest (the "Assigned Interests") in and to all of Northern Trust's rights and obligations under the Credit Agreement dated as of September 15, 1999, as amended, (the "Credit Agreement") between Akorn and Akorn New Jersey, as borrowers, and Northern Trust, as lender.

Simultaneously with the execution of the Assignment and Assumption Agreement, Akorn entered into a Preferred Stock and Note Purchase Agreement (the "Purchase Agreement") with the Purchasers to redeem from the Purchasers the Assigned Interests in exchange for (a) an aggregate of 257,172 shares of Akorn's Series A 6% Participating Convertible Preferred Stock, par value \$1.00 per share (the "Series A Preferred Stock"), currently convertible into 34,289,600 Shares at \$0.75 per Share, (b) warrants currently exercisable to purchase an aggregate of 8,572,400 Shares at an exercise price of \$1.00 per Share and (c) an aggregate of approximately \$2,767,139.03 in subordinated promissory notes (the "Purchased Notes") issued to certain Purchasers, including the Trust. Pursuant to the Purchase Agreement and certain warrant agreements dated October 7, 2003 between Akorn and the Trust, the Trust acquired 107,350 shares of Series A Preferred Stock currently convertible into 14,313,333 Shares at \$0.75 per share and warrants currently exercisable to purchase an aggregate of 3,578,333 Shares at an exercise price of \$1.00 per share. Warrants issued in the Transaction have cashless exercise and certain antidilution protection.

In connection with the Transaction, Akorn filed that certain Articles of Amendment to Articles of Incorporation ("Articles of Amendment," attached hereto as Exhibit I), with the Louisiana Secretary of State on October 6, 2003. The Articles of Amendment designate and set forth the rights, preferences and privileges of the Series A Preferred Stock, including the following. The Series A Preferred 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 to be authorized and reserved for conversion of all of the Series A Preferred Stock and warrants issued in connection with the 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 are authorized and reserved. Subject to certain limitations, on October 31, 2011, Akorn is to redeem all shares of Series A Preferred Stock for an amount per share equal to \$100, as may be adjusted from time to time as set forth in the Articles of Amendment (the "Stated Value"), plus all accrued but unpaid dividends on such share ("Redemption Price"). If Akorn does not have sufficient funds to redeem all such shares, any shares of Series A Preferred not redeemed will accrue dividends at a rate of 10.0% per annum until redeemed. Shares of Series A Preferred Stock shall have liquidation rights in preference over junior securities, including shares of common stock and have certain antidilution protections. Without the approval of 50.1% of the Series A Preferred Stock, Akorn shall not take certain actions, including (i) issuing Series A Preferred Stock, securities senior or on par with the Series A Preferred Stock, (ii) amending Akorn's Articles of Incorporation or Bylaws to alter the rights of the Series A Preferred Stock, (iii) effect a change of control or (iv) effect a reverse split of the Series A Preferred Stock. The Series A 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, all shares of Series A Preferred Stock shall convert to shares of common stock on October 8, 2006.

Pursuant to the Purchase Agreement dated October 7, 2003 between Akorn and the Trust, the Trust acquired 107,350 shares of Series A Preferred Stock currently convertible into 14,313,333 Shares at \$0.75 per share and, pursuant to the terms of a certain warrant agreement dated October 7, 2003 between Akorn and the Trust (attached hereto as Exhibit IV), the Trust acquired warrants currently exercisable to purchase an aggregate of 3,578,333 Shares at an exercise price of \$1.00 per Share.

The Purchased Note issued to the Trust (attached hereto as Exhibit II) is in the principal amount of \$2,117,139.03, accrues interest at a rate of prime plus 1.75% and is due and payable on April 7, 2006. As an additional incentive to purchase the Purchased Notes, Akorn granted the Purchasers acquiring the Purchased Notes, including the Trust, an aggregate of 276,714 warrants currently exercisable to purchase Shares at an exercise price of \$1.10 per Share. Pursuant to the terms of that certain warrant agreement dated October 7, 2003 between Akorn and the Trust (attached hereto as Exhibit V), the Trust received warrants currently exercisable to purchase 211,714 Shares at an exercise price of \$1.10 per Share.

Akorn and Akorn New Jersey also entered into a Credit Facility dated October 7, 2003 ("Credit Facility") with LaSalle Bank National Association ("LaSalle Bank") to provide for new senior secured debt to Akorn. As a condition of entering into the Credit Facility, John N. Kapoor and the Trust executed a guaranty (the "Guaranty") in favor of LaSalle Bank on behalf of Akorn (attached hereto as Exhibit III). In exchange for entering into the Guaranty, pursuant to the terms of that certain warrant agreement dated October 7, 2003 between Akorn and the Trust (attached hereto as Exhibit VI), the Trust received warrants currently exercisable to purchase 880,000 Shares at an exercise price of \$1.10 per Share.

As part of the Transaction, Akorn and the Purchasers also entered into a Registration Rights Agreement dated October 7, 2003 (the "Registration Rights Agreement") pursuant to which Purchasers were granted certain registration rights in connection with the Series A Preferred Stock and warrants issued in connection with the Transaction, including three (3) demand registrations for holders of more than 5,000,000 Shares, incidental or piggy-back registrations upon a registration by Akorn on Form S-1, S-2 or S-3 and shelf registration rights. Akorn further agreed not to enter

into any new agreement with more preferential registration rights.

The Transaction closed on October 7, 2003.

The foregoing description of the transactions and agreements set forth in this schedule 13D are qualified in their entirety by reference to the complete agreements governing such matters, each of which are incorporated by reference or attached to this Schedule 13D as exhibits below pursuant to Item 7.

Except as set forth herein, the Reporting Persons do not have any contracts, arrangements, understandings or relationships with respect to any securities of Akorn.

ITEM 7. MATERIAL TO BE FILED AS EXHIBITS

The following Exhibits are filed with this Amendment:

I. Articles of Amendment to Articles of Incorporation of Akorn filed with the Secretary of State of Louisiana on October 6, 2003.

II. Subordinated Promissory Note of Akorn in the principal amount of \$2,117,139.03 due April 7, 2003.

III. Guaranty, dated as of October 7, 2003, of John N. Kapoor and the Trust in favor LaSalle Bank National Association, as Administrative Agent, and the Lender Parties, as defined therein.

IV. Warrant Agreement, dated as of October 7, 2003, between Akorn and the Trust (Preferred Stock Warrants).

V. Warrant Agreement, dated as of October 7, 2003, between Akorn and the Trust (Purchased Note Warrants).

VI. Warrant Agreement, dated as of October 7, 2003, between Akorn and the Trust (Guaranty Warrants).

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

October 21, 2003 /s/ John N. Kapoor

John N. Kapoor

October 21, 2003 /s/ Editha A. Kapoor

Editha A. Kapoor

EJ FINANCIAL/AKORN MANAGEMENT, L.P.

October 21, 2003 By: Pharma Nevada, Inc.
Managing General Partner

/s/ John N. Kapoor

John N. Kapoor, President

October 21, 2003 Pharma Nevada, Inc.

By: /s/ John N. Kapoor

John N. Kapoor, President

John N. Kapoor Trust
dtd 9/20/89

October 21, 2003 By: /s/ John N. Kapoor

John N. Kapoor as Trustee

ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION

OF

AKORN, INC.

Pursuant to Section 33 of the Louisiana Business Corporation Law ("LBCL") and Article V(B) of its articles of incorporation (the "ARTICLES"), Akorn, Inc., a Louisiana corporation (the "CORPORATION"), acting through its undersigned President and Secretary, does hereby certify that the Board of Directors of the Corporation (the "BOARD OF DIRECTORS"), at a meeting held September 24, 2003, and acting with the approval and upon the recommendation of a duly appointed committee of disinterested members thereof duly adopted resolutions approving an amendment to the Corporation's Articles to add a new paragraph (C) to Article V, reading in its entirety as follows:

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

Section 1. Designation and Amount.

The shares of such series shall be designated as the "Series A 6.0% Participating Convertible Preferred Stock" (the "SERIES A PREFERRED STOCK") and the number of shares constituting such series shall be 257,172 shares of Series A Preferred Stock.

Section 2. Rank.

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

Section 3. Dividends and Distributions.

(a) Payment and Accrual of Dividends.

(i) The holders of shares of Series A Preferred Stock shall be entitled to receive on each Dividend Payment Date, in respect of the Dividend Period ending on (and including) the date immediately prior to such Dividend Payment Date, dividends on each share of Series A Preferred Stock at the rate of 6.0% (the "DIVIDEND RATE") per annum on the Accrued Value thereof from and after the Issuance Date, provided that with respect to the Initial Dividend Period, the dividends set

forth above shall be prorated based on the number of days in such period. Such dividends shall be fully cumulative and accumulate and accrue on a daily basis (computed on the basis of a 360-day year of twelve 30-day months) and compound quarterly in arrears on the Dividend Payment Dates at the rate indicated above and in the manner set forth herein, whether or not they have been declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends. If the Stockholder Approval has not yet been obtained (or the Stockholder Approval has been obtained, but the Corporation does not have a sufficient number of shares of Common Stock duly authorized and reserved for issuance upon conversion of all of the outstanding shares of Series A Preferred Stock) on October 7, 2004 (the "REQUIRED DATE"), shares of the Series A Preferred Stock shall accrue dividends at a rate equal to 10.0% per annum of the Accrued Value, accruing and compounding in the manner set forth in this Section 3(a) from such date until such shares are redeemed by the Corporation or converted into shares of Common Stock, in each case in accordance with this Article V(C); provided, however, that on any date after the Required Date, if the Stockholder Approval has been obtained and the Corporation has a sufficient number of shares of Common Stock duly authorized and reserved for issuance upon conversion of all of the outstanding shares of Series A Preferred Stock, from and after such

date, for so long as the Corporation shall have a sufficient number of shares of Common Stock duly authorized and reserved for issuance upon conversion of all of the outstanding shares of Series A Preferred Stock, the dividends shall accrue at the Dividend Rate.

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

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

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

(c) Restricted Payments.

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

(ii) Parity Securities. So long as any shares of Series A Preferred Stock remain outstanding, the Corporation shall not make any Parity Securities Distribution unless (A) all accrued and unpaid dividends on the shares of Series A Preferred Stock shall have been paid in cash, (B) sufficient consideration shall have been paid or set apart for the payment of the dividend for the current Dividend Period with respect to the Series A Preferred Stock and the current dividend period with respect to any Parity Securities and (C) all Redemption Obligations have been fully discharged; provided, that, dividends may be declared and paid on Parity Securities if dividends

are declared and paid on the Series A Preferred Stock (in accordance with the terms of Section 3(a)) ratably in proportion to the respective aggregate amounts of dividends accumulated and unpaid on such Parity Securities and accumulated and unpaid on the Series A Preferred Stock.

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

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Section 4. Redemption.

(a) General. Except as provided in this Section 4, the Corporation shall have no right to redeem any shares of Series A Preferred Stock.

(b) Mandatory Redemption. On October 31, 2011 (the "MANDATORY REDEMPTION DATE"), subject to the limitations of Section 55 and other applicable provisions of the LBCL, the Corporation shall be required to redeem all then outstanding shares of Series A Preferred Stock for an amount in cash in respect of each share of Series A Preferred Stock equal to the Redemption Price of such share of Series A Preferred Stock.

(c) Optional Redemption. Provided the Stockholder Approval has been obtained and the Corporation then has a sufficient number of shares of Common Stock duly authorized and reserved for issuance upon conversion of all of the outstanding shares of Series A Preferred Stock, the Corporation may redeem, at its option, on and after October 9, 2006, subject to the holders' conversion rights set forth in Section 7, all, but not less than all, outstanding shares of Series A Preferred Stock for an amount in cash in respect of each share of Series A Preferred Stock equal to the Redemption Price of such share of Series A Preferred Stock.

(d) Redemption Procedures.

(i) Mandatory Redemption Notice. Notice of any redemption pursuant to Section 4(b) shall be sent by or on behalf of the Corporation not less than 45 nor more than 60 days prior to the Mandatory Redemption Date, by first class mail, postage prepaid, to each holder of record of the Series A Preferred Stock at such holder's last address as it appears on the transfer books of the Corporation; provided, however, that no failure to give such notice or any defect therein shall affect the validity of the giving of such notice for the redemption of any shares of Series A Preferred Stock except as to the holder to whom the Corporation has failed to give notice or except as to the holder to whom notice was defective. Each such notice shall state: (A) the number of shares of Series A Preferred Stock to be redeemed in the aggregate and from such holder; (B) the Redemption Price per share, including a detailed calculation thereof; (C) the place or places where certificates for such shares are to be surrendered for payment of the Redemption Price; and (D) that, unless the Corporation defaults in making payment therefore, the dividends on the shares to be redeemed shall cease to accrue on the Mandatory Redemption Date.

(ii) Optional Redemption Notice. Notice of any redemption pursuant to Section 4(c) shall be sent by or on behalf of the Corporation not less than 45 nor more than 60 days prior to the Optional Redemption Date, by first class mail, postage prepaid, to each holder of record of the Series A Preferred Stock at such holder's last address as it appears on the transfer books of the Corporation; provided, however, that no failure to give such notice or any defect therein shall affect the validity of the giving of such notice for the redemption of any shares of Series A Preferred Stock except as to the holder to whom the Corporation has failed to give notice or except as to the holder to whom notice was defective. Each such notice shall state: (A) the number of shares of Series A Preferred Stock to be

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redeemed in the aggregate and from such holder; (B) the Redemption Price per share, including a detailed calculation thereof; (C) the redemption date (the "OPTIONAL REDEMPTION DATE"); (D) the place or places where certificates for such shares are to be surrendered for payment of the Redemption Price and (E) that, unless the Corporation defaults in making payment therefore, the dividends on the shares to be redeemed shall cease to accrue on the Optional Redemption Date.

(iii) Payment of Funds. If notice has been mailed in accordance with Section 4(d) (i) or Section 4(d) (ii), as applicable, and provided that on or before the Mandatory Redemption Date or Optional Redemption Date, as applicable, all funds necessary for such redemption shall have been set aside by the Corporation, separate and apart from its other funds in trust for the pro rata benefit of the holders of the shares to be redeemed, so as to be, and to continue to be available therefor, then, from and after the Mandatory Redemption Date or Optional Redemption Date, as applicable, dividends on the shares of the Series A Preferred Stock so redeemed shall cease to accrue and accumulate, and such shares shall no longer be deemed to be outstanding and shall not have the status of shares of Series A Preferred Stock, and all rights of the holders thereof as shareholders of the Corporation (except the right to receive from the Corporation the Redemption Price) shall cease. Upon surrender, in accordance with such notice, of the certificates for any shares so redeemed, such shares shall be redeemed by the Corporation at the Redemption Price, which shall be paid in cash in immediately available funds.

(iv) Representations. Any notice of redemption pursuant Section 4(d) (i) or (ii) shall be accompanied by a representation by the Corporation to the effect that the consummation of the redemption will not render the Corporation insolvent or unable to pay its debts as they become due.

(e) Failure to Discharge a Redemption Obligation. If the Corporation does not have sufficient funds or capital and surplus legally available to discharge any Redemption Obligation (or is otherwise prohibited from affecting such redemption), the Corporation shall take all actions required or permitted under the LBCL to permit such redemption of the Series A Preferred Stock, and the Corporation shall redeem as many shares of the Series A Preferred Stock as it may legally redeem, ratably from the holders thereof in proportion to the number of shares held by the holders from which shares are being redeemed, and shall thereafter from time to time, as soon as it shall have funds available therefor, redeem as many shares of the Series A Preferred Stock as it legally may redeem until it has fully discharged all Redemption Obligations. Shares of the Series A Preferred Stock not redeemed as required pursuant to any Redemption Obligation shall accrue dividends at a rate equal to 10% per annum of the Accrued Value, accruing and compounding in the manner set forth in Section 3(a) hereof from the Mandatory Redemption Date or the Optional Redemption Date, as applicable, until such shares are redeemed by the Corporation in accordance with Section 4(b) or Section 4(c), as applicable.

(f) No Selective Repurchase Offers. Neither the Corporation nor any of its Subsidiaries shall repurchase any outstanding shares of Series A Preferred Stock unless the Corporation either (i) offers to purchase all of the

then outstanding shares of Series A Preferred Stock or (ii) offers to purchase shares of Series A Preferred Stock from the holders in proportion to the respective number of shares of Series A Preferred Stock held by each holder. In any such repurchase by the Corporation, if all shares of Series A Preferred Stock are not being repurchased, then the number of shares of Series A Preferred Stock to be repurchased shall be allocated among all shares of Series A Preferred Stock held by holders which accept the Corporation's repurchase offer so that the shares of Series A Preferred Stock are repurchased from such holders in proportion to the respective number of shares of Series A Preferred Stock held by each such holder which accepts the Corporation's offer (or in such other proportion as agreed by all such holders who accept the Corporation's offer). Nothing in this Section 4(f) shall (i) obligate a holder of shares of Series A Preferred Stock to accept the Corporation's repurchase offer or (ii) prevent the Corporation from redeeming shares of Series A Preferred Stock in accordance with the terms of (and this Section 4(f) shall not apply to) Sections 4(a) through

4(e).

Section 5. Liquidation, Dissolution or Winding Up.

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

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

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

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Section 6. Voting Rights.

(a) General. Each holder of Series A Preferred Stock shall have full voting rights and powers, and shall be entitled to vote on all matters put to a vote or consent of shareholders of the Corporation, with each holder of shares of Series A Preferred Stock having the number of votes equal to the quotient obtained by dividing (x) the sum of (i) the aggregate Stated Value of such shares as of the record date for the vote or consent which is being taken, or if no such record date is established, on the date such vote is taken or any consent of shareholders is solicited plus (ii) an amount equal to the aggregate of all accrued but unpaid dividends (whether or not declared) on such shares as of such date by (y) the Conversion Price as of such date. The holders of the Series A Preferred Stock and the holders of Common Stock shall vote together as a single class on all matters submitted to a vote of the shareholders of the Corporation, except in cases where a vote of the holders of the Series A Preferred Stock, voting separately as a class, is required by law or by this Article V(C). Holders of Series A Preferred Stock shall be entitled to notice of all shareholders meetings in accordance with the procedures set forth in the Corporation's Bylaws.

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

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

would adversely affect the rights, privileges or preferences of the Series A Preferred Stock;

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

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

(iv) authorize or otherwise effectuate a reverse stock split of Series A Preferred Stock.

Section 7. Conversion.

(a) Terms of Conversion. Each share of Series A Preferred Stock shall be convertible, at the option of the holder thereof, at any time, and from time to time, whether or not the Corporation has given notice of redemption under Section 4, on the terms and conditions set forth in this

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Section 7, into a number of fully paid and non-assessable shares of Common Stock equal to the quotient obtained by dividing (x) the sum of (i) the Stated Value plus (ii) an amount equal to the aggregate of all accrued but unpaid dividends (whether or not declared) on such share calculated through and including the date of such conversion by (y) the Conversion Price in effect on the date of such conversion.

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

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

(ii) Below Market or Conversion Price Issuances. In case the Corporation shall at any time or from time to time after the Issuance Date issue or sell any Common Stock or Convertible Security (collectively, "ADDITIONAL SHARES") without consideration or for a consideration per share (or having a conversion, exchange or exercise price per share) less than the greater of (A) the Closing Price per share of Common Stock on the Business Day immediately preceding the earlier of the issuance, or public announcement of the issuance, of such Additional Shares and (B) the Conversion Price as of the date of such issuance then, and in each such case, the Conversion Price shall be reduced to an amount determined by multiplying the Conversion Price in effect on the day immediately prior to such date by a fraction of which (x) the numerator is the sum of (i) the product of (A) the number of shares of Common Stock outstanding immediately prior to such sale or

issuance multiplied by (B) the greater of (1) the then applicable Conversion Price per share and (2) the Closing Price per share of Common Stock on the date preceding the earlier of the issuance or public announcement of the issuance of such Additional Shares (the greater of (1) and (2) above hereinafter referred to as the "ADJUSTMENT PRICE") and (ii) the aggregate consideration receivable by the Corporation for the total number of shares of Common Stock so issued

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(or into or for which the Convertible Securities are convertible, exercisable or exchangeable), and (y) the denominator equals the product of (i) the sum of (A) the total number of shares of Common Stock outstanding immediately prior to such sale or issue and (B) the number of additional shares of Common Stock issued (or into or for which the Convertible Securities may be converted, exercised or exchanged), multiplied by (ii) the Adjustment Price. An adjustment made pursuant to this subsection (ii) shall be made on the next Business Day following the date on which any such issuance is made and shall be effective retroactively to the close of business on the date of such issuance. Notwithstanding the foregoing, no adjustment (other than as provided for in Section 7(b)(iv)(5)(D)) shall be made pursuant to this Section 7(b)(ii) in connection with any Excluded Issuances.

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

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

(1) In the case of the issuance of Common Stock or Convertible Securities for cash in a public offering or private placement, the aggregate consideration shall be deemed to be the amount of cash paid before deducting any discounts, commissions or

placement fees payable by the Corporation to any underwriter or placement agent in connection with the issuance and sale thereof.

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

(3) Subparagraph (2) above notwithstanding, in the case of the issuance of Additional Shares to the owners of the non-surviving entity in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefore shall be deemed to be the Fair Market Value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock or Convertible Securities, as the case may be.

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

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

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

(B) With respect to any Convertible Securities issued after the Issuance Date for which an adjustment to the Conversion Price previously has been made pursuant to Section 7(b)(ii), on any increase in the number of

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shares of Common Stock deliverable upon exercise, conversion or exchange of, or a decrease in the exercise price of, such Convertible Securities other than a change resulting from the anti-dilution provisions thereof, the applicable Conversion Price shall forthwith be readjusted retroactively to give effect to such increase or decrease;

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

(D) With respect to any Convertible Securities issued prior to the Issuance Date, if there is any increase in the number of shares of Common Stock deliverable upon exercise, conversion or exchange of, or a decrease in the exercise price of, such Convertible Securities other than a change resulting from the anti-dilution provisions thereof,

such Convertible Securities shall be treated as if they had been cancelled and reissued and an adjustment to the Conversion Price with respect to such deemed issuance shall be made pursuant to Section 7(b)(ii), if applicable; and

(E) No further adjustment of the Conversion Price adjusted upon the issuance of any such Convertible Securities shall be made as a result of the actual issuance of Common Stock upon the exercise, conversion or exchange of any such Convertible Securities.

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

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

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

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

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

(i) In case of any capital reorganization or reclassification of outstanding shares of Common Stock (other than a reclassification covered by Section 7(b)), or in case of any consolidation or merger of the Corporation with or into another Person, or in case of any sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation) of all or substantially all of the Corporation's assets, on a consolidated basis, in one transaction or a series of related transactions, to any Person (including any group that is deemed to be a Person) not otherwise constituting a Liquidation in accordance with Section 5 (each of the foregoing being referred to as a "TRANSACTION"), in each case which is effected in such a manner that the holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock or other securities or property (including cash) with respect to or in exchange for Common Stock, shares of Series A Preferred Stock then outstanding shall thereafter be convertible into, in lieu of the Common Stock issuable upon such conversion prior to the consummation of such

Transaction, the kind and amount of shares of stock and other securities and property (including cash) receivable upon the consummation of such Transaction by a holder of that number of shares of Common Stock into which one share of Series A Preferred Stock was

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

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

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

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

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

(e) Conversion Procedures.

(i) The holder of any shares of Series A Preferred Stock may exercise its right to convert any or all such outstanding shares into shares of Common Stock at any time by surrendering for such purpose to the Corporation, at its principal office or at such other office or agency maintained by the Corporation for that purpose, a certificate or certificates representing the shares of Series A Preferred Stock to be converted, duly endorsed to the Corporation in blank, accompanied by a written notice stating that such holder elects to convert all or a specified whole number of such shares in accordance with the provisions of this Section 7. Upon delivery to the Corporation by a holder of shares of Series A Preferred Stock of a notice of election to convert, the right of the Corporation to redeem such shares of Series A Preferred Stock shall terminate, regardless of whether a notice of redemption as described in Section 4(d) has been mailed. The Corporation will pay any and all documentary, stamp or similar issue or transfer tax that may be payable in respect of any issue or delivery of shares of Common Stock to the holder on conversion of the Series A Preferred Stock pursuant hereto.

(ii) As promptly as practicable, and in any event within five Business Days after the surrender of such certificate or certificates and the receipt of such notice relating thereto and, if applicable, payment of all transfer taxes (or the demonstration to the reasonable satisfaction of the Corporation that such taxes are inapplicable), the Corporation shall deliver or cause to be delivered (i) certificates (which shall bear legends, if appropriate) registered in the name of such holder representing the number of full shares of Common Stock to which the holder of shares of Series A Preferred Stock so converted shall be entitled, (ii) if less than the full number of shares of Series A Preferred Stock evidenced by the surrendered certificate or certificates are being converted, a new certificate or certificates for the number of shares evidenced by such surrendered certificate or certificates less the number of shares converted and (iii) payment of all amounts to which a holder is entitled pursuant to Section 7(f) hereof. All shares of Common Stock issuable upon conversion of the Series A Preferred Stock will be made without charge to the holders of Series A Preferred Stock and upon issuance will be fully paid and non-assessable, free and clear of all taxes, liens, charges and encumbrances with respect to the issuance thereof. Such conversion shall be deemed to have been made at the close of business on the date of receipt of such notice and of such surrender of the certificate or certificates representing the shares of Series A Preferred Stock to be converted so that the rights of the holder

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thereof as to the shares being converted shall cease except for the right to receive shares of Common Stock and any payment of amounts due pursuant to Section 7(f), and the person entitled to receive the shares of Common Stock shall be treated for all purposes as having become the record holder of such shares of Common Stock at such time.

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

shall be returned to the holder as Series A Preferred Stock.

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

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

(g) Reservation of Shares. The Corporation shall (i) prior to the date of the Stockholder Approval, at all times reserve and keep available, free from liens, charges and security interests and not subject to any preemptive rights solely for issuance upon conversion of the Series A Preferred Stock, the Available Shares and to ensure that the Available Shares may be issued without violation of any applicable law or regulation or of any requirement of any securities exchange or inter-dealer quotation system on which the Available Shares may be listed or traded, and (ii) from and after the date of the Stockholder Approval, at all times reserve and keep available, free from

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

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

(i) Mandatory Conversion. Provided that the Stockholder Approval has been obtained and the Corporation has a sufficient number of shares of Common Stock duly authorized and reserved for issuance upon conversion of all of the outstanding shares of Series A Preferred Stock, on October 8, 2006 (the "MANDATORY CONVERSION DATE"), whether or not the Corporation has given notice of a redemption pursuant to Section 4, each share of Series A Preferred Stock shall, immediately automatically convert into fully paid and non-assessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series A Preferred Stock shall be entitled upon such automatic conversion shall be determined by dividing (x) (i) the Stated Value plus (ii) an amount equal to the aggregate of all accrued but unpaid dividends (whether or not declared) on such share by (y) the Conversion Price in effect on the date of such conversion. Any conversion pursuant to this Section 7(i) shall occur automatically and without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent. Upon the occurrence of such automatic conversion of the Series A Preferred Stock, the Corporation shall provide written notice to the holders of the Series A Preferred Stock and the holders of the Series A Preferred Stock shall, a reasonable time thereafter, surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Series A Preferred Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on the Corporation's stock records, a certificate or certificates for the number of shares of Common Stock into which the shares of Series A Preferred Stock surrendered were convertible on the date on which such automatic

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

(j) Automatic Conversion on Conversion Trigger Date.

(i) Provided the Stockholder Approval has been obtained, and the Corporation has a sufficient number of shares of Common Stock duly authorized and reserved for issuance upon conversion

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of all of the outstanding shares of Series A Preferred Stock, upon the occurrence of any Conversion Trigger Date, all of the then outstanding shares of Series A Preferred Stock shall be immediately and automatically converted into fully paid and non-assessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series A Preferred Stock shall be entitled upon such conversion shall be determined by dividing (x) the sum of (i) the Stated Value plus (ii) an amount equal to the aggregate of all accrued but unpaid dividends (whether or not declared) on such share by (y) the Conversion Price in effect at the close of business on the Business Day immediately preceding such Conversion Trigger Date.

(ii) Mechanics. Any conversion pursuant to this Section 7(j) shall occur automatically and without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent. Upon the occurrence of such automatic conversion of the Series A Preferred Stock, the Corporation shall provide written notice to the holders of the Series A Preferred Stock and the holders of the Series A Preferred Stock shall, a reasonable time thereafter, surrender the certificates representing such shares at the office of the Corporation or any transfer agent for the Series A Preferred Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on the Corporation's stock records, a certificate or certificates for the number of shares of Common Stock into which the shares of Series A Preferred Stock surrendered were convertible on the date on which such automatic conversion occurred. All certificates evidencing shares of Series A Preferred Stock which are required to be surrendered for conversion in accordance with the provisions hereof shall, from and after the date of such conversion, be deemed to have been retired and cancelled and the shares of Series A Preferred Stock represented thereby converted into Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates.

Section 8. Reacquired Shares.

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

Section 9. No Preemptive rights.

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

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Section 10. General Provisions.

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

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

Section 11. Definitions.

For the purposes of this Article V(C):

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

"ACCRUED VALUE" means, with respect to a share of Series A Preferred Stock, as at any date, the sum of (as adjusted for any split, subdivision, combination, consolidation, recapitalization or similar event with respect to the Series A Preferred Stock) (i) the Stated Value plus (ii) an amount equal to the aggregate of all accrued but unpaid dividends (whether or not declared) on such share through and including such date which have been added to Accrued Value pursuant to Section 3(a) (ii).

"ADDITIONAL DIVIDENDS" has the meaning set forth in Section 3(b) above.

"ADDITIONAL SHARES" has the meaning set forth in Section 7(b) (ii) above.

"ADJUSTMENT PRICE" has the meaning set forth in Section 7(b) (ii) above.

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

"AVAILABLE SHARES" shall have the meaning ascribed thereto in the Preferred Stock Purchase Agreement.

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

"CHANGE OF CONTROL" means (i) any sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation) of all or substantially all of the Corporation's assets, on a consolidated basis, in one

transaction or a series of related transactions, to any Person (including any group that is deemed to be a Person) other than the Initial Purchasers or their respective Affiliates; (ii) any Person (including any group that is deemed to be a Person) other than the Initial Purchasers or any of their respective Affiliates, is or becomes the "beneficial owner" (within the meaning of Rule 13d-3 promulgated under the Exchange Act) directly or indirectly, of more than 50% of the combined voting power of the Voting Securities of the Corporation (or the surviving entity or entities of a transaction or a series of related transactions if other than the Corporation); (iii) the Continuing Directors cease for any reason to constitute a majority of the members of the Board of Directors then in office; (iv) a merger or consolidation of the Corporation with any other company, other than a merger or consolidation resulting in the Voting Securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the Voting Securities of the Corporation or such surviving entity outstanding immediately after such merger or consolidation; or (v) the Corporation adopts,

voluntarily or involuntarily, a plan of liquidation or dissolution.

"CLOSING PRICE" per share of Common Stock on any date shall be the closing sale price on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Common Stock or such other securities are listed or admitted to trading or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the last quoted sale price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or such other system then in use, or, if on any such date the Common Stock or such other securities are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker, selected by the Board of Directors and reasonably acceptable to the holders of a majority of the outstanding shares of Series A Preferred Stock, making a market in the Common Stock or such other securities of the Corporation.

"COMMON STOCK" means the common stock, no par value per share, of the Corporation.

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

"CONVERSION NOTICE" has the meaning set forth in Section 7(j) (ii) above.

"CONVERSION PRICE" means the Initial Conversion Price, subject to adjustment as provided in Section 7(b).

"CONVERSION TRIGGER DATE" shall mean any date on which the Closing Price per share of Common Stock for at least 20 consecutive Trading Days immediately preceding such date, including the last Trading Day of such period,

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exceeds \$4.00 per share (as adjusted for any split, subdivision, combination, consolidation, recapitalization or similar event with respect to the Common Stock).

"CONVERTIBLE SECURITIES" shall mean any options or warrants to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock, or options or warrants to purchase or rights to subscribe for such convertible or exchangeable securities.

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

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

"DIVIDEND RATE" has the meaning set forth in Section 3(a) (i).

"EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended and the rules and regulations promulgated thereunder.

"EXCLUDED ISSUANCES" means the issuance or reissuance of any shares of Common Stock or Convertible Securities (whether treasury shares or newly issued shares) pursuant to or in connection with (1) a dividend or distribution on, or subdivision, combination, consolidation or reclassification of, the outstanding shares of Common Stock requiring an adjustment in the Conversion Price pursuant to Section 7(b) (i), (2) any Convertible Security outstanding as of the Issuance Date (except as otherwise provided in Section 7(b) (iv) (5) (D)), including, without limitation, the Note Warrants and the Preferred Stock Warrants (3) the conversion of shares of Series A Preferred Stock, (4) the grant or exercise of

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

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

"INITIAL CONVERSION PRICE" means \$0.75.

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

"INITIAL PURCHASERS" means the initial Purchasers of the Series A Preferred Stock pursuant to the Preferred Stock Purchase Agreement.

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

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

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

"LIQUIDATION" has the meaning set forth in Section 5(a) above.

"LIQUIDATION PREFERENCE" means the greater of (x) the sum of (i) the Stated Value plus (ii) an amount equal to the aggregate of all accrued but unpaid dividends (whether or not declared) on such share and (y) the amount that

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would be payable to such holder in the Liquidation in respect of Common Stock issuable upon conversion of such share of Series A Preferred Stock if all outstanding shares of Series A Preferred Stock were converted into Common Stock immediately prior to the Liquidation in accordance with Section 7 hereof.

"MANDATORY CONVERSION DATE" has the meaning set forth in Section 7(i) above.

"MANDATORY REDEMPTION DATE" has the meaning set forth in Section 4(b) above.

"NOTE WARRANTS" has the meaning ascribed thereto in the Preferred Stock Purchase Agreement.

"OPTIONAL REDEMPTION DATE" has the meaning set forth in Section 4(d) (ii) above.

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

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

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

"PREFERRED STOCK PURCHASE AGREEMENT" means the Preferred Stock Purchase Agreement dated as of September 25, 2003, by and among the Company and the Purchasers described therein.

"PREFERRED STOCK WARRANTS" has the meaning ascribed thereto in the Preferred Stock Purchase Agreement.

"REDEMPTION DATE" means the Mandatory Redemption Date or the Optional Redemption Date, as applicable.

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"REDEMPTION OBLIGATION" means any unsatisfied obligation of the Corporation to redeem shares of Series A Preferred Stock pursuant to Sections 4(b) or 4(c) hereof.

"REDEMPTION PRICE" means the sum of (i) the Stated Value plus (ii) an amount equal to the aggregate of all accrued but unpaid dividends (whether or not declared) on such share calculated through and including the Mandatory

Redemption Date.

"REQUIRED DATE" has the meaning set forth in Section 3(a)(i).

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

"SERIES A PREFERRED STOCK" has the meaning set forth in Section 1 above.

"SIGNIFICANT HOLDER" shall mean as of any date, any holder of Series A Preferred Stock that was issued at least 25,000 shares of Series A Preferred Stock on the original Issuance Date; provided, that, from and after the original Issuance Date, in the event that any Significant Holder shall transfer in the aggregate (in one or more transactions) more than 50% of the shares of Series A Preferred Stock originally issued to such Significant Holder on the original Issuance Date (as adjusted for any stock dividends, combinations, splits, reclassifications or other similar events affecting the number of outstanding shares of the Series A Preferred Stock) to any Person that is not an Affiliate of such Significant Holder, such Significant Holder shall no longer constitute a Significant Holder from and after such date of transfer.

"STATED VALUE" means, with respect to a share of Series A Preferred Stock, \$100 (as adjusted for any split, subdivision, combination, consolidation, recapitalization or similar event with respect to the Series A Preferred Stock).

"STOCKHOLDER APPROVAL" means the approval by the stockholders of the Corporation authorizing a number of shares of Common Stock so that the Corporation shall have a sufficient number of shares of Common Stock duly authorized and reserved for issuance upon conversion of the Series A Preferred Stock, the Preferred Stock Warrants, the Note Warrants and any warrants issued or to be issued pursuant to the Warrant Agreements.

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

"SURVIVING PERSON" means the continuing or surviving Person of a merger, consolidation or other corporate combination, the Person receiving a transfer of all or a substantial part of the properties and assets of the Corporation, or the Person consolidating with or merging into the Corporation in a merger, consolidation or other corporate combination in which the Corporation

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is the continuing or surviving Person, but in connection with which the Series A Preferred Stock or Common Stock of the Corporation is exchanged, converted or reinstated into the securities of any other Person or cash or any other property; provided, however, if such Surviving Person is a direct or indirect Subsidiary of a Person, the parent entity shall be deemed to be a Surviving Person.

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

"TRANSACTION" has the meaning set forth in Section 7(c) above.

"VOTING SECURITIES" mean the Common Stock, the Series A Preferred Stock and any other securities of the Corporation having the voting power under ordinary circumstances with respect to the election of directors of the Corporation.

"WARRANT AGREEMENTS" (a) the Warrant Agreement, dated as of October 7, 2003, between the Corporation and The John N. Kapoor Trust, dtd 9/20/89 and (b) the Warrant Agreement, dated as of October 7, 2003, between the Corporation and

Arjun Waney, whereby in consideration for having such parties enter into a personal guaranty under the Corporation's credit facility, the Corporation will grant warrants to such parties.

These Articles of Amendment are executed as of the ____ day of October, 2003.

AKORN, INC.

By: _____
Arthur S. Przybyl, President

By: _____
Bernard J. Pothast, Secretary

ACKNOWLEDGMENT

STATE OF ILLINOIS

COUNTY OF LAKE

BEFORE ME, the undersigned authority, personally came and appeared the undersigned Arthur S. Przybyl and Bernard J. Pothast, to me known to be the persons who signed the foregoing instrument as President and Secretary, respectively, of Akorn, Inc. and who acknowledged and declared, in the presence of the two witnesses whose names are subscribed below, that they signed such instrument as their free act and deed in the capacities and for the purposes mentioned therein.

IN WITNESS WHEREOF, each of the undersigned has herewith affixed his or her hand on this ____ day of October, 2003, in the aforesaid county and state.

WITNESSES:

Name (please print): _____ Arthur S. Przybyl, President

Name (please print): _____ Bernard J. Pothast, Secretary

Notary Public

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THIS NOTE MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THIS NOTE UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAWS.

SUBORDINATED PROMISSORY NOTE

\$2,117,139.03

New York, NY

Date of Issuance:
October 7, 2003

FOR VALUE RECEIVED, Akorn, Inc., a Louisiana corporation (the "COMPANY"), promises to pay to the order of The John N. Kapoor Trust dtd 9/20/89 or its administrators, representatives, successors or assigns ("HOLDER"), the principal sum of TWO MILLION ONE HUNDRED SEVENTEEN THOUSAND ONE HUNDRED THIRTY NINE DOLLARS AND THREE CENTS (\$2,117,139.03), and to pay interest on the outstanding principal balance of this Subordinated Promissory Note (this "NOTE") in accordance with Section 2 of this Note.

1. Maturity. The Company shall repay the outstanding principal balance of this Note and interest accrued thereon in full on April 7, 2006 (the "MATURITY DATE"). All payments received shall be applied first against costs of collection (if any), then against accrued and unpaid interest on this Note, then against the outstanding principal balance of this Note.

2. Interest. Interest on the outstanding principal balance of this Note shall accrue from the date hereof at the Prime Rate plus 1.75% (the "INTEREST RATE"), calculated on the basis of a 360 day year of twelve 30 day months and such accrued interest shall be due and payable quarterly in arrears beginning on December 31, 2003 and thereafter on March 31, June 30, September 30 and December 31 of each year (each, an "INTEREST PAYMENT DATE"). The accrued interest shall be payable in cash in arrears on each Interest Payment Date, to the extent permitted to be paid in cash under the credit facility entered into among the Company, Akorn (New Jersey), Inc., La Salle Bank National Association ("LASALLE BANK") and the financial institutions that are or may from time to time become parties thereto, dated as of October 7, 2003 (the "CREDIT FACILITY") and to the extent such accrued interest is not paid in cash it shall accrue and be added to the outstanding principal balance of this Note; provided, however, that upon the occurrence of an Event of Default (as defined herein) interest on the outstanding principal balance of this Note will accrue from the date of such Event of Default at a rate per annum equal to two (2 %) plus the Interest Rate then in effect. "PRIME RATE" shall mean a rate per year equal to that rate of interest per year announced from time to time by LaSalle Bank called its prime rate, which rate at any time may not be the lowest rate charged by LaSalle Bank. Changes in the prime rate shall take effect on the date set forth in each announcement for a change in the Prime Rate.

3. Prepayment. To the extent permitted under the Credit Facility, the outstanding principal balance and all accrued interest payable to Holder hereunder may be prepaid at any time. All prepayments so permitted shall be applied in the order provided in Section 1.

4. Warrant Coverage. Simultaneously herewith, the Company will issue to the Holder warrants to purchase Common Stock with the terms described in the form of warrant agreement attached hereto as Exhibit A.

5. Defaults and Remedies. An "EVENT OF DEFAULT" with respect to this Note occurs if:

(a) the Company defaults in the payment of interest on this Note when the same becomes due and payable and the default continues for a period of 5 days;

(b) The Company defaults in the payment of the principal amount hereof when the same becomes due and payable;

(c) (i) The Company shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to the Company or its debts, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for the Company or for all or any substantial part of the Company's assets, or the Company shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Company any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismitted, undischarged or unbonded for a period of 30 days; or (iii) there shall be commenced against the Company any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within 30 days from the entry thereof; or (iv) the Company shall take any action in furtherance of, or indicating his consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) above; or (v) the Company shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due.

If an Event of Default occurs then, (in addition to any other rights or remedies the Holder may have hereunder), (a) if such event is an Event of Default specified in (c) above, automatically all the amounts outstanding under this Note shall immediately become due and payable and (b) if such event is any other Event of Default, so long as any such Event of Default shall be continuing, the Holder may by notice of default to the Company declare all or a portion of the amounts outstanding under this Note as due and payable forthwith.

If an Event of Default occurs and is continuing, the Holder may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of, or interest on, this Note or to enforce the performance of any provisions of this Note. A delay or

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omission by the Holder in exercising any right or remedy arising upon an Event of Default shall not impair the right or remedy or constitute a waiver of, or acquiescence in, the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

The Holder may waive an existing Event of Default and its consequences. When an Event of Default is waived, it is cured and ceases to exist for all purposes of this Note.

Notwithstanding any other provision of this Note, but subject to the provisions of Section 1, the right of the Holder to receive payment of principal on this Note, on or after the Maturity Date or to bring suit for the enforcement of any such payment on or after such Maturity Date shall not be impaired or affected without the consent of the Holder.

6. Subordination. The Company hereby agrees that, with respect to the its obligations under this Note and any other obligations of any nature payable in respect thereof, including, without limitation, any renewals, rearrangements, or modifications thereof, shall be and hereby are at all times, and in all respects, subordinate and junior in right of payment to the payment of the principal and interest under the (i) the Credit Facility or any replacement or refinancing thereof and (ii) the \$3,250,000 Promissory Note, dated December 20, 2001 from the Company to NeoPharm, Inc. This Note will rank senior to the Convertible Bridge Loan and Warrant Agreement, dated as of July 12, 2001, by and among the Company and the John N. Kapoor Trust dtd September 20, 1989.

7. Miscellaneous.

(a) The Company hereby waives presentment, demand, protest, notice of dishonor, diligence and all other notices, any release or discharge arising from any extension of time, discharge of a prior party, or other cause of release or discharge other than actual payment in full hereof.

(b) Holder shall not be deemed, by any act or omission, to have waived

any of its rights or remedies hereunder unless such waiver is in writing and signed by Holder and then only to the extent specifically set forth in such writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event. No delay or omission of Holder to exercise any right, whether before or after an Event of Default hereunder, shall impair any such right or shall be construed to be a waiver of any right or Event of Default, and the acceptance at any time by Holder of any past-due amount shall not be deemed to be a waiver of the right to require prompt payment when due of any other amounts then or thereafter due and payable.

(c) Time is of the essence hereof. Upon any Event of Default hereunder, Holder may exercise all rights and remedies provided for herein and by law or equity, including, but not limited to, the right to immediate payment in full of this Note.

(d) The remedies of Holder as provided herein, or any one or more of them, in law or at equity, shall be cumulative and concurrent, and may be pursued singularly, successively or

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together at Holder's sole discretion, and may be exercised as often as occasion therefore shall occur.

(e) It is expressly agreed that if this Note is referred to any attorney or if suit is brought to collect or interpret this Note or any part hereof or to enforce or protect any rights conferred upon Holder by this Note or any other document evidencing or securing this Note, then the Company covenants and agrees to pay all reasonable costs, including attorneys' fees, incurred by Holder in connection therewith.

(f) If any provisions of this Note would require the Company to pay interest hereon at a rate exceeding the highest rate allowed by applicable law, the Company shall instead pay interest under this Note at the highest rate permitted by applicable law.

(g) This Note shall be governed by and construed in accordance with the laws of the State of New York without giving effect to any choice or conflict of law provision or law that would cause the application of the laws of any other jurisdiction other than the State of New York.

(h) This Note and the rights and obligations herein may be assigned by Holder to any affiliate of Holder, to members of the immediate family of Holder, or to trusts, partnerships or other beneficiaries of Holder, with the prior written consent of the Company, which consent shall not be unreasonably withheld.

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IN WITNESS WHEREOF, the Company has executed this Subordinated Promissory Note as of the date first above written.

AKORN, INC.

By:

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

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Exhibit A - Warrant Agreement

GUARANTY

THIS GUARANTY, dated as of October 7, 2003 (the "Guaranty") is executed in favor of LASALLE BANK NATIONAL ASSOCIATION, as Administrative Agent, and the Lender Parties referred to below.

R E C I T A L S
- - - - -

A. Akorn, Inc., ("Akorn") and Akorn (New Jersey), Inc. ("Akorn New Jersey" and together with Akorn, the "Companies" and each, a "Company") have entered into a Credit Agreement dated as of October 7, 2003 (as amended, restated, modified or supplemented from time to time, the "Credit Agreement"; terms used but not defined herein are used as defined in the Credit Agreement) with various financial institutions and LaSalle Bank National Association, as agent (in its capacity as agent, together with any successor in such capacity, the "Administrative Agent"), pursuant to which such financial institutions have agreed to make loans to, and issue or participate in letters of credit for the account of, the Companies.

B. Each of the undersigned is a significant shareholder of Akorn and will benefit from the making of loans and issuance of letters of credit pursuant to the Credit Agreement and is willing to guaranty the Guaranteed Obligations (as defined below) as hereinafter set forth.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the undersigned hereby jointly and severally, unconditionally and irrevocably, as primary obligor and not merely as surety, guarantees the full and prompt payment when due, whether by acceleration or otherwise, and at all times thereafter, of all obligations (monetary or otherwise) of the Companies (including all Obligations) to each of the Administrative Agent and each Lender Party (as defined below) under or in connection with the Credit Agreement, the Notes, any other Loan Document and any other document or instrument executed in connection therewith and all Hedging Obligations of the Companies to any Lender Party, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due (all such obligations being herein collectively called the "Guaranteed Obligations"), plus all costs and expenses paid or incurred by the Administrative Agent or any Lender Party in enforcing this Guaranty against such undersigned. As used herein, "Lender Party" means each Lender under and as defined in the Credit Agreement and any Affiliate of such a Lender which is a party to a Hedging Agreement with either Company.

Each of the undersigned agrees upon the occurrence of (a) any Event of Default under Section 13.1.4 of the Credit Agreement or (b) the death of Dr. John N. Kapoor, in either case at a time when any of the Guaranteed Obligations may not then be due and payable, such undersigned will pay to the Administrative Agent for the account of the Lender Parties forthwith the full amount which would be payable hereunder by such undersigned if all Guaranteed Obligations were then due and payable.

To secure all obligations of each of the undersigned hereunder, the Administrative Agent and each Lender Party shall have a lien on and security interest in and may, without demand or

notice of any kind, at any time and from time to time when any Event of Default exists, appropriate and apply toward the payment of such amount, in such order of application as the Administrative Agent and the Lender Parties may elect, any and all balances, credits, deposits, accounts or moneys of or in the name of such undersigned now or hereafter with the Administrative Agent or such Lender Party and any and all property of every kind or description of or in the name of such undersigned now or hereafter, for any reason or purpose whatsoever, in the possession or control of, or in transit to, the Administrative Agent or such Lender Party or any agent or bailee for the Administrative Agent or such Lender Party.

To further secure all obligations of each of the undersigned hereunder, the undersigned shall cause to be delivered to the Administrative Agent one or more unconditional stand-by letters of credit (collectively, the "Letter of

Credit") issued by a bank reasonably satisfactory to the Administrative Agent with a stated amount of not less than \$5,500,000 (the "L/C Collateralized Guaranty Amount"), in form and substance reasonably satisfactory to the Administrative Agent. The Letter of Credit shall name the Administrative Agent and the Lenders as beneficiaries thereof and shall be subject to drawing by the Administrative Agent if an Event of Default occurs and is continuing under the Credit Agreement. The Letter of Credit shall remain in full force and effect during the term of the Credit Agreement and this Guaranty. The difference between (a) the aggregate principal amount of all Guaranteed Obligations minus (b) the L/C Collateralized Guaranty Amount shall be hereafter referred to as the "Uncollateralized Guaranty Amount".

Notwithstanding anything to the contrary set forth herein, the Uncollateralized Guaranty Amount shall be reduced to the amounts set forth below if EBITDA of Akorn and its Subsidiaries is at or above the level specified below for the corresponding period (such reduction to be effective as provided below):

PERIOD	EBITDA	UNCOLLATERALIZED GUARANTY AMOUNT
-----	-----	-----
10/1/03-6/30/04	\$4,600,000	\$3,500,000
10/1/03-7/31/04	\$4,600,000	\$3,500,000
10/1/03-8/31/04	\$4,600,000	\$3,500,000
10/1/03-9/30/04	\$6,700,000	\$2,000,000
10/1/03-10/31/04	\$6,700,000	\$2,000,000
10/1/03-11/30/04	\$6,700,000	\$2,000,000
Twelve month period ending 12/31/04 and the twelve month period ending on the last day of each calendar month thereafter	\$8,000,000	\$0

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provided, that if after any such reduction of the Uncollateralized Guaranty Amount, EBITDA for any twelve month period ceases to be above \$6,700,000, the Uncollateralized Guaranty Amount shall automatically and without further action by any party increase and reinstate to the Uncollateralized Guaranty Amount corresponding to such EBITDA (and if EBITDA for such later period falls below \$4,600,000, the Uncollateralized Guaranty Amount shall be increased back to the full original Uncollateralized Guaranty Amount) regardless of whether the Uncollateralized Guaranty Amount had previously been reduced to zero. All calculations of EBITDA shall be made in accordance with the requirements of the Credit Agreement. The effective date of any reduction of the Uncollateralized Guaranty Amount shall be the date which is 10 Business Days after which the Companies deliver a properly completed Compliance Certificate for the relevant period specified in the chart above to the Administrative Agent; provided that if the Administrative Agent disagrees with any such EBITDA calculation, the Uncollateralized Guaranty Amount shall not be subject to reduction until Akorn's independent auditor has confirmed such EBITDA calculation in writing as complying with GAAP and the requirements of the Credit Agreement. The Uncollateralized Guaranty Amount shall not be subject to reduction at any time that a Default or an Event of Default has occurred and is continuing under the Credit Agreement (but such Default or Event of Default shall not affect any prior reduction in accordance with this Guaranty). No reduction of the Uncollateralized Guaranty Amount shall affect the undersigned's obligations with respect to the full L/C Collateralized Guaranty Amount or any costs or expenses of collection hereunder (neither of which shall be subject to reduction).

So long as this Guaranty is continuing, each of the undersigned covenants and agrees to furnish to the Administrative Agent or its authorized representatives information regarding the business affairs, operations and financial condition of each of the undersigned, including, but not limited to, as soon as available, and in any event, within one hundred twenty (120) days of the end of each calendar year, (i) an annual financial statement in form and substance reasonably acceptable to the Administrative Agent, and (ii) such other information (including nonfinancial information) as the Administrative Agent may reasonably request, all in reasonable detail and prepared and certified jointly and severally by each of the undersigned as true and accurate and fairly representing the financial condition of each of the undersigned. The undersigned jointly and severally represent and warrant that the financial statements of each of the undersigned furnished to the Administrative Agent at or prior to the execution and delivery of this Guaranty fairly present the financial condition

of each of the undersigned for the periods shown therein, and since the dates covered by the most recent of such financial statements, there has been no material adverse change in the undersigned's business operations or financial condition. Each of the undersigned covenants and agrees that upon any material adverse change in its financial condition, it shall promptly furnish to the Administrative Agent or its authorized representatives written updates concerning such change together with any additional information as the Administrative Agent may reasonably request (including nonfinancial information), prepared and certified by the undersigned providing such updates as true and accurate and fairly representing the financial condition of such undersigned. The undersigned jointly and severally represent and warrant that except as expressly shown on the most recent of such financial statements, each of the undersigned (a) owns all of its assets free and clear of all Liens (except for Liens that would not in the aggregate cause the next succeeding sentence to be violated); (b) is not a party to any litigation, nor is any litigation threatened to the knowledge of the undersigned which would, if adversely determined, cause any material adverse change in its business or financial condition;

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and (c) has no delinquent tax liabilities, nor have any tax deficiencies been proposed against it. Neither of the undersigned shall sell, lease, transfer, convey, pledge, encumber, grant a security interest in or assign (any such action, a "Transfer") any of its assets, unless such Transfer is in an amount which, after giving effect thereto, would leave the undersigned with unencumbered assets, after deducting all liabilities and obligations of the undersigned (including Contingent Liabilities), equal to at least 125% of the Uncollateralized Guaranty Amount. Without limitation of the foregoing, The John N. Kapoor Trust dated September 20, 1989 (the "Kapoor Trust") agrees to maintain at all times cash and/or investment grade bonds and/or shares of stock listed and traded on the New York Stock Exchange or NASDAQ in an amount not less than the lesser of (i) \$5,000,000 and (ii) the Uncollateralized Guaranty Amount (the "Marketable Securities Reserve") (which need not be held at or with a Lender Party but which shall be identified on the Kapoor Trust's financial statements or supplemental schedules thereto and any updates thereof (and the lists of account or accounts in which such cash, bonds or shares are held shall be or shall have been provided to the Administrative Agent)). The cash, bonds and shares of stock constituting the Marketable Securities Reserve shall at all times be owned legally and beneficially by the Kapoor Trust free and clear of all Liens or adverse claims: provided, that the Marketable Securities Reserve may be held through one or more privately held partnership interests (the legal and beneficial owner of which is the Kapoor Trust) but only if there are no consent requirements or restrictions on the ability of the Kapoor Trust to direct such partnerships to sell or transfer the Marketable Securities Reserve (other than customary notice requirements (not to exceed 30 days) to cause a distribution of assets held by such partnerships) and the liquidity of the Marketable Securities Reserve is not otherwise restricted.

This Guaranty shall in all respects be a continuing, irrevocable, absolute and unconditional guaranty, and shall remain in full force and effect (notwithstanding, without limitation, the dissolution of any of the undersigned or that at any time or from time to time no Guaranteed Obligations are outstanding) until all Commitments have terminated and all Guaranteed Obligations have been paid in full.

The undersigned further agree that if at any time all or any part of any payment theretofore applied by the Administrative Agent or any Lender Party to any of the Guaranteed Obligations is or must be rescinded or returned by the Administrative Agent or such Lender Party for any reason whatsoever (including the insolvency, bankruptcy or reorganization of either Company or any of the undersigned), such Guaranteed Obligations shall, for the purposes of this Guaranty, to the extent that such payment is or must be rescinded or returned, be deemed to have continued in existence, notwithstanding such application by the Administrative Agent or such Lender Party, and this Guaranty shall continue to be effective or be reinstated, as the case may be, as to such Guaranteed Obligations, all as though such application by the Administrative Agent or such Lender Party had not been made.

The Administrative Agent or any Lender Party may, from time to time, at its sole discretion and without notice to the undersigned (or any of them), take any or all of the following actions: (a) retain or obtain a security interest in

any property to secure any of the Guaranteed Obligations or any obligation hereunder, (b) retain or obtain the primary or secondary obligation of any obligor or obligors, in addition to the undersigned, with respect to any of the Guaranteed Obligations, (c) extend or renew any of the Guaranteed Obligations for one or more periods (whether or not longer than the original period), alter or exchange any of the Guaranteed

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Obligations, or release or compromise any obligation of any of the undersigned hereunder or any obligation of any nature of any other obligor with respect to any of the Guaranteed Obligations, (d) release its security interest in, or surrender, release or permit any substitution or exchange for, all or any part of any property securing any of the Guaranteed Obligations or any obligation hereunder, or extend or renew for one or more periods (whether or not longer than the original period) or release, compromise, alter or exchange any obligations of any nature of any obligor with respect to any such property, and (e) resort to the undersigned (or any of them) for payment of any of the Guaranteed Obligations when due, whether or not the Administrative Agent or such Lender Party shall have resorted to any property securing any of the Guaranteed Obligations or any obligation hereunder or shall have proceeded against any other of the undersigned or any other obligor primarily or secondarily obligated with respect to any of the Guaranteed Obligations.

The undersigned's liability under this Guaranty shall in no way be modified, affected, impaired, reduced, released or discharged by any of the following (any or all of which may be done or omitted by the Administrative Agent and/or each Lender Party in its sole discretion, without notice to anyone and irrespective of whether the Guaranteed Obligations shall be increased or decreased thereby): (a) any acceptance by the Administrative Agent and/or each Lender Party of any new or renewal note or notes of either Company, or of any security or collateral for, or other guarantors or obligors upon, any of the Guaranteed Obligations; (b) any compromise, settlement, surrender, release, discharge, renewal, refinancing, extension, alteration, exchange, sale, pledge or election with respect to the Guaranteed Obligations, or any note by either Company, or with respect to any collateral under Section 1111 or take any action under Section 364, or any other section of the United States Bankruptcy Code, now existing or hereafter amended, or other disposition of, or substitution for, or indulgence with respect to, or failure, neglect or omission to realize upon, or to enforce or exercise any liens or rights of appropriation or other rights with respect to, the Guaranteed Obligations or any security or collateral therefor or any claims against any person or persons primarily or secondarily liable thereon; (c) any failure, neglect or omission to perfect, protect, secure or insure any of the foregoing security interests, liens, or encumbrances of the properties or interests in properties subject thereto; (d) any change in either Company's name or the merger of either Company into another corporation; (e) any act of commission or omission of any kind or at any time upon the part of the Administrative Agent and/or any Lender Party with respect to any matter whatsoever, other than the execution and delivery by the Administrative Agent to the undersigned of an express written release or cancellation of this Guaranty; or (f) the payment in full of the Guaranteed Obligations unless such payment in full is indefeasible and all Commitments have been terminated. The undersigned hereby consent to all acts of commission or omission of the Administrative Agent and/or any Lender Party set forth above and agrees that the standards by which good faith, diligence, reasonableness and care shall be measured, shall be determined and governed solely by the terms and provisions hereof.

Each of the undersigned hereby expressly waives: (a) notice of the acceptance by the Administrative Agent or any Lender Party of this Guaranty, (b) notice of the existence or creation or non-payment of all or any of the Guaranteed Obligations, (c) presentment, demand, notice of dishonor, protest, and all other notices whatsoever, and (d) all diligence in collection or protection of or realization upon any Guaranteed Obligations or any security for or guaranty of any Guaranteed Obligations.

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Each of the undersigned hereby expressly and irrevocably: (a) waives, to the fullest extent possible, on behalf of itself and successors and assigns

(including any surety) and any other Person (until the Guaranteed Obligations have been indefeasibly paid in full and the Commitments have terminated), any and all rights at law or in equity to subrogation, reimbursement, exoneration, contribution, indemnification, set off or to any other rights that could accrue to a surety against a principal, a guarantor against a maker or obligor, an accommodation party against the party accommodated, a holder or transferee against a maker, or to the holder of a claim against any person, and which either of the undersigned may have or hereafter acquire against any person in connection with or as a result of the undersigned's execution, delivery and/or performance of this Guaranty, or any other documents to which either of the undersigned is a party or otherwise; (b) waives any "claim" (as such term is defined in the United States Bankruptcy Code) of any kind against the Companies, and further agrees that it shall not have or assert any such rights against any person (including any surety), either directly or as an attempted set off to any action commenced against either of the undersigned by the Administrative Agent or any other person; and (c) acknowledges and agrees (i) that the foregoing waivers are intended to benefit the Administrative Agent and each Lender Party and shall not limit or otherwise affect the undersigned's liability hereunder or the enforceability of this Guaranty, (ii) that the Companies and their successors and assigns are intended third party beneficiaries of the foregoing waivers, and (iii) the agreements set forth in this paragraph and the Administrative Agent and each Lender Party's rights under this paragraph shall survive payment in full of the Guaranteed Obligations.

Each of the undersigned waives any and all defenses, claims and discharges of the Companies, or any other obligor, pertaining to the Guaranteed Obligations, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, each of the undersigned will not assert, plead or enforce against the Administrative Agent and/or any Lender Party any defense of waiver, release, discharge in bankruptcy, statute of limitations, res judicata, statute of frauds, anti-deficiency statute, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to either Company or any other person liable in respect of any of the Guaranteed Obligations, or any setoff available against the Administrative Agent and/or any Lender Party to the Borrower or any such other person, whether or not on account of a related transaction. Each of the undersigned expressly agrees that it shall be and remain liable for any deficiency remaining after foreclosure of any mortgage or security interest securing the Guaranteed Obligations, whether or not the liability of the Companies or any other obligor for such deficiency is discharged pursuant to statute or judicial decision.

Notwithstanding any payment made by or for the account of any of the undersigned pursuant to this Guaranty, the undersigned shall not be subrogated to any right of the Administrative Agent or any Lender Party until such time as the Administrative Agent and the Lender Parties shall have received indefeasible payment in cash of the full amount of all Guaranteed Obligations and all Commitments have been terminated.

Each of the undersigned further agrees to pay all expenses (including the reasonable attorneys' fees and charges) paid or incurred by the Administrative Agent or any Lender Party in endeavoring to collect the Guaranteed Obligations of such undersigned, or any part thereof, and in enforcing this Guaranty against such undersigned.

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The creation or existence from time to time of additional Guaranteed Obligations to the Administrative Agent or the Lender Parties or any of them is hereby authorized, without notice to the undersigned (or any of them), and shall in no way affect or impair the rights of the Administrative Agent or the Lender Parties or the obligations of the undersigned under this Guaranty, including each of the undersigned's guaranty of such additional Guaranteed Obligations.

The Administrative Agent and any Lender Party may from time to time without notice to the undersigned (or any of them), assign or transfer any or all of the Guaranteed Obligations or any interest therein; and, notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, such Guaranteed Obligations shall be and remain Guaranteed Obligations for the purposes of this Guaranty, and each and every immediate and successive assignee or transferee of any of the Guaranteed Obligations or of any interest therein shall, to the extent of the interest of such assignee or transferee in the Guaranteed Obligations, be entitled to the benefits of this Guaranty to the same extent as if such assignee or transferee were an original Lender Party.

The Administrative Agent agrees that, if the Guaranteed Obligations have been indefeasibly paid in full by the undersigned, upon the request of the undersigned, it will take such steps as are reasonably requested by the undersigned (at the sole expense of the undersigned) to assign the Loan Documents to the undersigned (which assignment shall be without recourse, representation or warranty); provided that the Administrative Agent is reasonably satisfied at such time that such assignment will not result in any liability or impairment on the part of the Administrative Agent or the Lender Parties. The Companies hereby irrevocably consent to any such assignment.

No delay on the part of the Administrative Agent or any Lender Party in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Administrative Agent or any Lender Party of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy; nor shall any amendment, modification or waiver of any provision of this Guaranty be binding upon the Administrative Agent and the Lender Parties or the undersigned, except as expressly set forth in a writing duly signed and delivered on behalf of the Administrative Agent or the undersigned, as the case may be. No action of the Administrative Agent or any Lender Party permitted hereunder shall in any way affect or impair the rights of the Administrative Agent or any Lender Party or the obligations of the undersigned under this Guaranty. For purposes of this Guaranty, Guaranteed Obligations shall include all obligations of the Companies to the Administrative Agent or any Lender Party arising under or in connection with the Credit Agreement, any Note, any other Loan Document or any other document or instrument executed in connection therewith and all Hedging Obligations of either Company to any Lender Party, in each case notwithstanding any right or power of either Company or anyone else to assert any claim or defense as to the invalidity or unenforceability of any such obligation, and no such claim or defense shall affect or impair the obligations of any of the undersigned hereunder.

Pursuant to the Credit Agreement, (a) this Guaranty has been delivered to the Administrative Agent and (b) the Administrative Agent has been authorized to enforce this Guaranty on behalf of itself and each of the Lender Parties. All payments by the undersigned

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pursuant to this Guaranty shall be made to the Administrative Agent for the benefit of the Lender Parties.

This Guaranty shall be binding upon the undersigned and the successors and assigns of the undersigned; and to the extent that either Company or any of the undersigned is either a partnership or a corporation, all references herein to the Companies and to the undersigned, respectively, shall be deemed to include any successor or successors, whether immediate or remote, to such partnership or corporation. The term "undersigned" as used herein shall mean all parties executing this Guaranty and each of them, and all such parties shall be jointly and severally obligated hereunder. The undersigned agree that they shall be jointly and severally liable with all Guarantors of the Guaranteed Obligations.

WHEREVER POSSIBLE, EACH PROVISION OF THIS GUARANTY SHALL BE INTERPRETED IN SUCH MANNER AS TO BE EFFECTIVE AND VALID UNDER APPLICABLE LAW, BUT IF ANY PROVISION OF THIS GUARANTY SHALL BE PROHIBITED BY OR INVALID UNDER SUCH LAW, SUCH PROVISION SHALL BE INEFFECTIVE TO THE EXTENT OF SUCH PROHIBITION OR INVALIDITY, WITHOUT INVALIDATING THE REMAINDER OF SUCH PROVISION OR THE REMAINING PROVISIONS OF THIS GUARANTY.

THIS GUARANTY MAY BE EXECUTED IN ANY NUMBER OF COUNTERPARTS AND BY THE DIFFERENT PARTIES HERETO ON SEPARATE COUNTERPARTS, AND EACH SUCH COUNTERPART SHALL BE DEEMED TO BE AN ORIGINAL BUT ALL SUCH COUNTERPARTS SHALL TOGETHER CONSTITUTE ONE AND THE SAME GUARANTY. AT ANY TIME AFTER THE DATE OF THIS GUARANTY, ONE OR MORE ADDITIONAL PERSONS MAY BECOME PARTIES HERETO BY EXECUTING AND DELIVERING TO THE ADMINISTRATIVE AGENT A COUNTERPART OF THIS GUARANTY. IMMEDIATELY UPON SUCH EXECUTION AND DELIVERY (AND WITHOUT ANY FURTHER ACTION), EACH SUCH ADDITIONAL PERSON WILL BECOME A PARTY TO, AND WILL BE BOUND BY ALL OF THE TERMS OF, THIS GUARANTY.

THIS GUARANTY MAY BE SECURED BY ONE OR MORE SECURITY AGREEMENTS, PLEDGE AGREEMENTS, MORTGAGES, LETTERS OF CREDIT, CASH COLLATERAL AGREEMENTS, DEEDS OF

TRUST OR OTHER SIMILAR DOCUMENTS.

THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS APPLICABLE TO CONTRACTS MADE AND TO BE FULLY PERFORMED IN SUCH STATE.

ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF ILLINOIS OR IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY OR

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SEEKING ENFORCEMENT OF THIS GUARANTY MAY BE BROUGHT, AT THE AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND OR UNDERSIGNED LOCATED. EACH OF THE UNDERSIGNED HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF ILLINOIS AND OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH OF THE UNDERSIGNED FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, TO THE ADDRESS SET FORTH OPPOSITE ITS SIGNATURE HERETO (OR SUCH OTHER ADDRESS AS IT SHALL HAVE SPECIFIED IN WRITING TO THE AGENT AS ITS ADDRESS FOR NOTICES HEREUNDER) OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF ILLINOIS. EACH OF THE UNDERSIGNED HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

EACH OF THE UNDERSIGNED, AND (BY ACCEPTING THE BENEFITS HEREOF) EACH OF THE ADMINISTRATIVE AGENT AND EACH LENDER PARTY, HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS GUARANTY, ANY OTHER LOAN DOCUMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

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

DR. JOHN N. KAPOOR

By: _____

Address: _____

THE JOHN N. KAPOOR TRUST DATED
SEPTEMBER 20, 1989

By:

Title: -----

Address:

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Signature page for the Guaranty dated as of October 7, 2003 among Dr. John N. Kapoor, and The John N. Kapoor Trust and LaSalle National Bank, as agent for the Lender Parties referred to in such Guaranty

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WARRANT AGREEMENT

WARRANT AGREEMENT, dated as of October 7, 2003 (this "Agreement"), between Akorn, Inc., a Louisiana corporation (the "Company"), and The John N. Kapoor Trust dtd 9/20/89 (the "Initial Holder"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

W I T N E S S E T H:

WHEREAS, pursuant to the Preferred Stock and Note Purchase Agreement, dated as of September 25, 2003, by and among the Company and the purchasers listed on the signature pages thereto (the "Purchase Agreement"), the Company has agreed to issue to the Purchasers warrants to purchase shares of Common Stock (as defined below);

WHEREAS, this Agreement governs the issuance of the Warrant Certificates (as defined below) and the other matters as provided herein, including, without limitation, for the purpose of defining the terms and provisions of the Warrants (as defined below) and the respective rights and obligations thereunder of the Company and the Initial Holder together with any subsequent record holders thereof (together with the holders of shares of Common Stock (or other securities) received upon exercise thereof, the "Holders").

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements contained herein, the Company and the Initial Holder hereby agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

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

"Additional Shares" has the meaning specified in Section 4.1(a)(ii) hereof.

"Affiliate" of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the

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management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Available Shares" means the 12,883,000 shares of Common Stock the Company currently has duly authorized and available to be reserved for issuance upon exercise of the Warrants.

"Board" means the board of directors of the Company from time to time.

"Business Day" means a day except a Saturday, Sunday or other day on which commercial banks in The City of New York, are authorized by law to close.

"Cashless Exercise" has the meaning specified in Section 3.3 hereof.

"Cashless Exercise Ratio" has the meaning specified in Section 3.3 hereof.

"Closing Date" means the date hereof.

"Common Stock" means the common stock, no par value per share, of the

Company, and any other capital stock of the Company into which such Common Stock may be converted or reclassified or that may be issued in respect of, in exchange for, or in substitution of, such Common Stock by reason of any stock splits, stock dividends, distributions, mergers, consolidations or other like events.

"Convertible Securities" means any options or warrants to purchase or rights to subscribe for shares of Common Stock, securities by their terms convertible into or exchangeable for shares of Common Stock, or options or warrants to purchase or rights to subscribe for such convertible or exchangeable securities.

"Current Market Value" has the meaning specified in Section 3.3 hereof.

"Exchange Act" means the United States Securities Exchange Act of 1934, as amended.

"Excluded Issuances" means the issuance or reissuance of any shares of Common Stock or Convertible Securities (whether treasury shares or newly issued shares) pursuant to or in connection with (1) a dividend or distribution on, or subdivision, combination, consolidation or reclassification of, the outstanding Common Stock requiring an adjustment in the Exercise Price pursuant to Section 4(a) (i), (2) any Convertible Security outstanding as of the Closing Date, including, without limitation, the Note Warrants (except as otherwise provided in Section 4.1(a) (iv) (5) (D)), (3) the exercise of Warrants, (4) the grant or exercise of any stock or stock options to employees, directors or consultants of

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

"Exercise Date" means the date upon which a Holder exercises a Warrant or Warrants in accordance with Section 3.2.

"Exercise Price" has the meaning specified in Section 3.1 hereof.

"Expiration Date" means the third anniversary of the date of this Agreement.

"Fair Market Value" with respect to any securities, assets or property means the fair value thereof as determined by an independent investment banking or appraisal firm experienced in the valuation of such securities or property; provided that the value of any securities that trade on a national securities exchange or inter-dealer quotation system shall be the Current Market Value thereof as of the date such value is determined.

"Guaranty Warrant Agreements" means (a) the Warrant Agreement, dated as of October 7, 2003, between the Company and The John N. Kapoor Trust, dtd 9/20/89 and (b) the Warrant Agreement, dated as of October 7, 2003, between the Company and Arjun Waney, whereby in consideration for having such parties enter into a personal guaranty under the Company's credit facility, the Company will grant warrants to such parties.

"Holders" has the meaning specified in the recitals to this Agreement.

"Laws" shall include all foreign, federal, state and local laws, statutes, ordinances, rules, regulations, orders, judgments, decrees and bodies of law.

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"Note Warrants" has the meaning ascribed thereto in the Purchase Agreement.

"Parent" means any Person of which the Company is a direct or indirect subsidiary.

"Person" means an individual, corporation, partnership, limited liability company, joint venture association, joint-stock company trust, unincorporated organization, government or agency thereof.

"Private Placement Legend" means the legend set forth on the Warrant Certificates in the form set forth in Section 2.3.

"Purchase Agreement" has the meaning specified in the recitals to this Agreement.

"Purchaser Representative" means the person designated to act as the representative of the purchasers listed on the signature pages of the Purchase Agreement, pursuant to the Purchaser Representative Agreement, dated as of the date hereof, who initially will be John N. Kapoor.

"Proxy Statement" means the proxy statement distributed to the Company's stockholders in connection with the Stockholder's Meeting.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the United States Securities Act of 1933, as amended.

"Stockholder Approval" shall have the meaning ascribed thereto in the Purchase Agreement.

"Subscription Form" means the form on the reverse side of the Warrant Certificate substantially in the form of Exhibit A hereto.

"Subsidiaries" or "Subsidiary" shall mean the collective reference to all direct or indirect subsidiaries of the Company.

"Surviving Person" means the continuing or surviving Person of a merger, consolidation or other corporate combination, the Person receiving a transfer of all or a substantial part of the properties and assets of the Company, or the Person consolidating with or merging in the Company in a merger, consolidation or other corporate combination in which the Company is the continuing surviving Person, but in connection with which the preferred stock or Common Stock of the Company is exchanged converted or reinstated into the

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securities of any other Person or cash or any other property; provided, however, if such Surviving Person is a direct or indirect subsidiary of a Person, the parent entity shall be deemed to be a Surviving Person.

"Transaction" has the meaning specified in Section 4.1(b)(i) hereof.

"Warrants" has the meaning specified in Section 2.1 hereof.

"Warrant Certificates" has the meaning specified in Section 2.2 hereof.

ARTICLE II

ISSUE OF WARRANTS

Section 2.1. Issuance of Warrants.

The Company hereby agrees to issue to the Initial Holder on the Closing Date warrants (the "Warrants") to purchase from the Company 3,578,333 shares of the Company's Common Stock at the Exercise Price.

Section 2.2. Form of Warrant Certificates.

Certificates representing the Warrants (the "Warrant Certificates") shall be in the form attached hereto as Exhibit A, shall be dated the Closing Date and shall have such insertions as are appropriate or required or permitted by this Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements stamped, printed, lithographed or engraved thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any Laws or to conform to custom or usage.

Section 2.3. Restrictive Legends.

The Warrant Certificates shall bear the following legend on the face thereof:

THE SECURITIES EVIDENCED HEREBY ARE NOT TRANSFERABLE, EXCEPT IN ACCORDANCE WITH THE WARRANT AGREEMENT.

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES.

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ARTICLE III

EXERCISE PRICE, EXERCISE, REPURCHASE OF WARRANTS AND REGISTRATION RIGHTS

Section 3.1. Exercise Price.

Each Warrant Certificate shall initially entitle the Holder thereof, subject to the provisions of this Agreement, to purchase the number of shares of Common Stock indicated thereon at a per share purchase price (the "Exercise Price") equal to \$1.00, subject to adjustment as provided in Section 4.1 and Article V hereof.

Section 3.2. Exercise; Restrictions on Exercise.

At any time after the Closing Date and prior to 5:00 p.m. (New York City time) on the Expiration Date, any outstanding Warrants may be exercised on any Business Day; provided that Holders of Warrants will be able to exercise their Warrants only if the exercise of such Warrants is exempt from the registration requirements of the Securities Act, as reasonably determined by the Company, and such securities are qualified for sale or exempt from qualification under the applicable securities laws of the states or other jurisdictions in which such Holders reside. Any Warrants not exercised by 5:00 p.m., New York City time, on the Expiration Date shall expire and all rights of the Holders of such Warrants shall terminate. Additionally, pursuant to Section 4.1(b)(ii) hereof, the Warrants shall expire and all rights of the Holders of such Warrants shall terminate in the event the Company merges or consolidates with or sells all or substantially all of its property and assets to a Person (other than an Affiliate of the Company) if the consideration payable to holders of Common Stock in exchange for their Common Stock in connection with such merger, consolidation or sale consists solely of cash or in the event of the dissolution, liquidation or winding up of the Company.

Section 3.3. Method of Exercise; Payment of Exercise Price.

In order to exercise all or any of the Warrants represented by a Warrant Certificate, the Holder thereof must surrender for exercise the

Warrant Certificate to the Company at its principal executive office, with the Subscription Form set forth on the reverse of the Warrant Certificate duly executed, together with payment in full of the Exercise Price then in effect for each share of Common Stock (or other securities) purchasable upon exercise of the Warrants as to which a Warrant is exercised; such payment may be made (i) in cash or by certified or official bank check payable to the order of the Company or by wire transfer of immediately available funds to an account designated by the Company for such purpose, (ii) without the payment of cash (a "Cashless Exercise"), by reducing the number of shares of Common Stock that would be obtainable upon the exercise of a Warrant and payment of the Exercise Price in cash so as to yield a number of shares of Common Stock upon the exercise of such Warrant equal to the product of (a) the number of shares of Common Stock for

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which such Warrant is exercisable as of the date of exercise (if the Exercise Price were being paid in cash) and (b) the Cashless Exercise Ratio, or (iii) a combination of (i) and (ii).

The "Cashless Exercise Ratio" shall equal a fraction, the numerator of which is the excess of the Current Market Value per share of Common Stock on the Exercise Date over the Exercise Price per share as of the Exercise Date and the denominator of which is the Current Market Value per share of the Common Stock on the Exercise Date. Upon surrender of a Warrant Certificate representing more than one Warrant in connection with the Holder's option to elect a Cashless Exercise, the number of shares of Common Stock deliverable upon a Cashless Exercise shall be equal to the number of shares of Common Stock issuable upon the exercise of Warrants that the Holder specifies are to be exercised pursuant to a Cashless Exercise multiplied by the Cashless Exercise Ratio. All provisions of this Agreement shall be applicable with respect to a surrender of a Warrant Certificate pursuant to a Cashless Exercise for less than the full number of Warrants represented thereby.

The "Current Market Value" per share of Common Stock on any date shall be the closing sale price on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Common Stock or such other securities are listed or admitted to trading or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the last quoted sale price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or such other system then in use, or, if on any such date the Common Stock or such other securities are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker, selected by the Board and reasonably acceptable to the Holder, making a market in the Common Stock or such other securities of the Company.

If less than all the Warrants represented by a Warrant Certificate are exercised, such Warrant Certificate shall be surrendered and a new Warrant Certificate of the same tenor and for the number of Warrants which were not exercised shall be executed by the Company and delivered to the Holder. Upon the exercise of any Warrants following the surrender of a Warrant Certificate in conformity with the foregoing provisions, the Company shall transfer promptly to the Holder appropriate evidence of ownership of any shares of Common Stock or other securities or property to which the Holder is entitled as a result of exercise, at the Company's option, an amount in cash, in lieu of any fractional shares, as provided in Section 4.3 hereof.

Upon the exercise of a Warrant or Warrants, the Company shall as promptly as practicable but not later than 14 Business Days after such exercise enter, or cause any transfer agent of the shares of Common Stock to enter, the name of the person entitled to receive the shares of Common Stock upon exercise of such Warrants into the Company's register of stockholders.

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Thereupon, the Company or the applicable transfer agent shall issue certificates for the necessary number of shares of Common Stock to which said Holder is

entitled.

A Warrant shall be deemed by the Company to be exercised immediately prior to the close of business on the date of surrender for exercise, as provided above, of the Warrant Certificate representing such Warrant and, for all purposes under this Agreement, the Holder shall receive the shares of Common Stock the Holder would have been entitled to had it been the registered Holder on such date, except that for purposes of transferring the shares of Common Stock or voting in a general stockholders' meeting, the Holder shall, in its relation with the Company, be deemed to be the Holder thereof only when such shares of Common Stock are entered in the register of stockholders in the name of such person; provided, however, that, with respect to Warrants which have been exercised but for which the corresponding shares of Common Stock have not been recorded in the register of stockholders, the provisions of Article IV shall continue to apply as if the number of Warrants held prior to exercise remained outstanding on the date of any action or event of the type giving rise to an adjustment under Article IV.

Section 3.4. Registration Rights.

The shares of Common Stock issuable upon exercise of the Warrants shall have the registration rights as set forth in the Registration Rights Agreement, dated as of October 7, 2003, by and among the Company and the parties listed on the signature pages thereto.

ARTICLE IV

ADJUSTMENTS

Section 4.1. Adjustments.

The Exercise Price and the number of shares of Common Stock (or other securities) purchasable upon exercise of each Warrant shall be subject to adjustment from time to time as follows (subject in each case to Section 4.1(a) (vi) hereof):

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

(i) Stock Dividends, Splits, etc. In case the Company shall at any time or from time to time after the Closing Date (A) declare a dividend or make a distribution on the outstanding shares of Common Stock or securities convertible into Common Stock, in either case, in shares of Common Stock or (B) effect a subdivision, combination, consolidation or reclassification of the outstanding shares of Common Stock into a greater or lesser number of shares of Common Stock, then, and in each such case, the Exercise Price in effect immediately prior to such event or the record date therefor, whichever

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is earlier, shall be adjusted by multiplying such Exercise Price by a fraction of which (x) the numerator is the number of shares of Common Stock that were outstanding immediately prior to such event and (y) the denominator is the number of shares of Common Stock outstanding immediately after such event. An adjustment made pursuant to this Section 4(a)(i) shall become effective (x) in the case of any such dividend or distribution, immediately after the close of business on the date for the determination of holders of shares of Common Stock entitled to receive such dividend or distribution, or (y) in the case of any such subdivision, combination, consolidation or reclassification, at the close of business on the day upon which such corporate action becomes effective.

(ii) Below Market or Conversion Price Issuances. In case the Company shall at any time or from time to time after the Closing Date issue or sell any Common Stock or Convertible Security (collectively, "Additional Shares") without consideration or for a consideration per share (or having a conversion, exchange or exercise price per share) less than the greater of (A) the Current Market Value per share of Common Stock on the Business Day immediately preceding the

earlier of the issuance, or public announcement of the issuance, of such Additional Shares and (B) the Exercise Price as of the date of such issuance then, and in each such case, the Exercise Price shall be reduced to an amount determined by multiplying the Exercise Price in effect on the day immediately prior to such date by a fraction of which (x) the numerator is the sum of (i) the product of (A) the number of shares of Common Stock outstanding immediately prior to such sale or issuance multiplied by (B) the greater of (1) the then applicable Exercise Price per share and (2) the Current Market Value per share of Common Stock on the date preceding the earlier of the issuance or public announcement of the issuance of such Additional Shares (the greater of (1) and (2) above hereinafter referred to as the "Adjustment Price") and (ii) the aggregate consideration receivable by the Company for the total number of shares of Common Stock so issued (or into or for which the Convertible Securities are convertible, exercisable or exchangeable), and (y) the denominator equals the product of (i) the sum of (A) the total number of shares of Common Stock outstanding immediately prior to such sale or issue and (B) the number of additional shares of Common Stock issued (or into or for which the Convertible Securities may be converted, exercised or exchanged), multiplied by (ii) the Adjustment Price. An adjustment made pursuant to this subsection (ii) shall be made on the next Business Day following the date on which any such issuance is made and shall be effective retroactively to the close of business on the date of such issuance. Notwithstanding the foregoing, no adjustment (other than as provided for in Section 4(a)(iv)(5)(D)) shall be made pursuant to this Section 4(a)(ii) in connection with any Excluded Issuances.

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(iii) Special Dividends; Repurchases. In case the Company after the Closing Date shall (1) distribute to all holders of shares of Common Stock evidences of its indebtedness, assets (excluding any regular periodic cash dividend but including any extraordinary cash dividend), capital stock (other than Common Stock) or rights to subscribe for capital stock (other than Common Stock), or (2) purchase or otherwise acquire for value any shares of Common Stock in an Above Market Repurchase, in each such case the Exercise Price in effect immediately prior to the date of such distribution (or the date immediately prior to the date of the public announcement of such distribution, whichever is earlier) or date of such purchase (or the date immediately prior to the date of the public announcement of such purchase), as applicable, shall be adjusted by multiplying such Exercise Price by a fraction of which (x) the numerator is the remainder (if greater than zero) of (i) the Current Market Value per share of Common Stock on such date, minus (ii) the Fair Market Value as of such date of the portion of assets, evidences of indebtedness, capital stock or subscription rights so distributed or paid applicable to one share of Common Stock, and (y) the denominator is the Current Market Value per share of Common Stock on such date, such adjustment to become effective immediately prior to the opening of business on the day following the date of distribution or purchase; provided, however, that no adjustment shall be made pursuant to clause (1) of this subparagraph (a)(iii) (A) if such issuance is an Excluded Issuance or (B) if an adjustment shall otherwise be made with respect to such distribution or issuance pursuant to Section 4.1(a)(ii); and further provided, however, that if in any case the numerator of such fraction shall be zero or less than zero, no adjustment shall be made in such case. The Company shall provide any Holder, upon receipt of a written request therefor, with any indenture or other instrument defining the rights of the holders of any indebtedness, assets, subscription rights or capital stock referred to in this subparagraph (a)(iii).

(iv) General. For the purposes of any adjustment of the Exercise Price pursuant to paragraph (ii) of this Section 4.1(a), the following provisions shall be applicable:

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

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

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(3) Subparagraph (2) above notwithstanding, in the case of the issuance of Additional Shares to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving corporation, the amount of consideration therefore shall be deemed to be the Fair Market Value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock or Convertible Securities, as the case may be.

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

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

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

(B) With respect to any Convertible Securities issued after the Closing Date for which an adjustment to the Exercise Price previously has been made pursuant to Section 4.1(a)(ii), on any increase in the number of shares of Common Stock deliverable upon exercise, conversion or exchange of, or a decrease in the exercise price of, such Convertible Securities other than a change resulting from the anti-dilution provisions thereof, the applicable Exercise Price shall forthwith be readjusted retroactively to give effect to such increase or decrease;

(C) With respect to any Convertible Securities issued after the Closing Date for which an adjustment to the Exercise Price has previously not been made pursuant to Section 4.1(a)(ii), if there is any increase in

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the number of shares of Common Stock deliverable upon exercise, conversion or exchange of, or a decrease in the exercise price of, such Convertible Securities other than a change resulting from the anti-dilution provisions thereof, such Convertible Securities shall be treated as if they had been cancelled and reissued and an adjustment to the Exercise Price with respect to such deemed issuance shall be made pursuant to Section 4.1(a)(ii), if applicable;

(D) With respect to any Convertible Securities issued prior to the Closing Date, if there is any increase in the number of shares of Common Stock deliverable upon exercise, conversion or exchange of, or a decrease in the exercise price of, such Convertible Securities other than a

change resulting from the anti-dilution provisions thereof, such Convertible Securities shall be treated as if they had been cancelled and reissued and an adjustment to the Exercise Price with respect to such deemed issuance shall be made pursuant to Section 4.1(a)(ii), if applicable; and

(E) No further adjustment of the Exercise Price adjusted upon the issuance of any such Convertible Securities shall be made as a result of the actual issuance of Common Stock upon the exercise, conversion or exchange of any such Convertible Securities.

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

(vi) Calculations. All calculations of the Exercise Price shall be made to the nearest five decimal places. Anything in Section 4.1(a) to the contrary notwithstanding, in no event shall the then current Exercise Price be increased as a result of any calculation made at any time pursuant to Sections 4.1(a)(ii) through 4.1(a)(iv). No adjustment to the Exercise Price pursuant to paragraph 4.1(a) shall be required unless such adjustment would require an increase or decrease of at least 1% in the Exercise Price; provided, however, that any adjustments which by reason of this paragraph 4.1(a)(vi) are not required to be made shall be carried forward and taken into account in

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any subsequent adjustment. Notwithstanding any other provision of this Section 4.1(a), no adjustment to the Exercise Price shall reduce the Exercise Price below \$0.01, and any such purported adjustment shall instead reduce the Exercise Price to \$0.01.

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

(viii) Successive Adjustments. Successive adjustments in the Exercise Price shall be made, without duplication, whenever any event specified in Sections 4.1(a)(i) through 4.1(a)(iii) shall occur.

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

(i) In case of any capital reorganization or reclassification of outstanding shares of Common Stock (other than a reclassification covered by Section 4.1(a)), or in case of any consolidation or merger of the Company with or into another Person, or in case of any sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation) of all or substantially all of the Company's assets, on a consolidated basis, in one transaction or a series of related transactions, to any Person (including any group that is deemed to be a Person) (each of the foregoing being referred to as a "Transaction"), in each case which is effected in such a manner that the holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock or other securities or property (including cash) with respect to or in exchange for Common Stock, Warrants then outstanding shall thereafter be convertible into, in lieu of the Common Stock issuable upon such conversion prior to the consummation of such

Transaction, the kind and amount of shares of stock and other securities and property (including cash) receivable upon the consummation of such Transaction by a holder of that number of shares of Common Stock into which such Holder's Warrants were exercisable (without regard to any limitation on exercise contained herein, the availability of authorized and unissued shares for issuance upon exercise, or otherwise) immediately prior to the consummation of such Transaction. In any such case, the Company or the Person formed by the consolidation or resulting from the merger or which acquires such assets or which acquires the Company's shares, as the case may be, shall make or cause to be made appropriate provisions (as determined in good faith by the Board) in the applicable agreement of merger or consideration, its certificate or articles of incorporation or other

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constituent documents to ensure that the provisions of this Agreement will continue to be applicable to the Warrants or any such other shares of stock and other securities (other than Common Stock) and property deliverable upon exercise of the Warrants remaining outstanding following the Transaction. In case securities or property other than Common Stock shall be issuable or deliverable upon conversion as aforesaid, then all references in this Section 4.1 shall be deemed to apply, so far as appropriate and as nearly as may be, to such other securities or property. The provisions of this Section 4.1(b) shall similarly apply to successive Transactions. The Company shall give written notice to the Holders at least 30 days prior to the date on which any Transaction or similar transaction affecting the Company shall take place.

(ii) Notwithstanding the foregoing, (x) if the Company merges or consolidates with, or sells all or substantially all of its property and assets to, another Person and consideration is payable to holders of Common Stock in exchange for their shares of Common Stock in connection with such merger, consolidation or sale which consists solely of cash, or (y) in the event of the dissolution, liquidation or winding up of the Company, then the Holders of Warrants shall be entitled to receive payments or distributions as of the date of such event on an equal basis with, and on the same day as, holders of shares of Common Stock (or other securities purchasable upon exercise of the Warrants) as if the Warrants had been exercised immediately prior to such event, less an amount equal to the Exercise Price. Upon receipt of such payment, if any, the rights of a Holder shall terminate and cease and such Holder's Warrants shall expire. In case of any such merger, consolidation or sale of assets, the surviving or acquiring Person or, in the event of any dissolution, liquidation or winding up of the Company, after receipt of surrendered Warrant Certificates from the Holder, the Company shall make payment by delivering a check in such amount as is appropriate (or, in the case of consideration other than cash, such other consideration as is appropriate) to the Holder.

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

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(iv) Nothing contained in this Section 4.1(b) shall limit the rights of the Holders to exercise the Warrants.

Section 4.2. Notice of Consolidation, Merger, Etc.

In case at any time after the date hereof and prior to 5:00 p.m., New York City time, on the Expiration Date, there shall be any (i) consolidation or merger involving the Company or sale, transfer or other disposition of all or substantially all of the Company's property, assets or business (except a merger or other reorganization in which the Company shall be the surviving corporation and holders of Common Stock receive no consideration in respect of their shares) or (ii) any other transaction contemplated by Section 4.1(b)(i) above, then, in any one or more of such cases, the Company shall mail, at the Company's expense, to the Holders, at the earliest practicable time (and, in any event, not less than 20 days before any date set for definitive action), notice of the date on which such reorganization, sale, consolidation, merger, dissolution, liquidation or winding up shall take place, as the case may be. Such notice shall also set forth such facts as shall indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the Exercise Price and the kind and amount of the shares of Common Stock and other securities, money and other property deliverable upon exercise of the Warrants. Such notice shall also specify the date as of which the holders of record of the shares of Common Stock or other securities or property purchasable upon exercise of the Warrants shall be entitled to exchange their shares for securities, money or other property deliverable upon such reorganization, sale, consolidation, merger, dissolution, liquidation or winding up, as the case may be.

Section 4.3. Fractional Interests.

In connection with the exercise of any Warrant pursuant to Section 4.1, no fractions of shares of Common Stock shall be issued, but in lieu thereof the Company shall pay a cash adjustment in respect of such fractional interest in an amount equal to such fractional interest multiplied by the Current Market Value per share of Common Stock on the day on which such Warrants are deemed to have been exercised. If more than one Warrant shall be surrendered for exercise at one time by the same Holder, the number of full shares of Common Stock issuable upon exercise thereof shall be computed on the basis of the total number of Warrants so surrendered.

Section 4.4. When Issuance or Payment May Be Deferred.

In any case in which this Article IV shall require that an adjustment in the Exercise Price be made effective as of a record date for a specified event, the Company may elect to defer until the occurrence of such event (i) issuing to the Holder of any Warrant exercised after such record date the shares of Common Stock and other shares in the capital of the Company, if any, purchasable upon such exercise over and above the shares of Common Stock and other shares in the capital of the Company, if any, purchasable upon such exercise and (ii) paying such Holder any amount in cash in lieu of a fractional share; provided, however, that the Company shall deliver to such Holder a due

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bill or other appropriate instrument evidencing such Holder's right to receive such additional shares of Common Stock, other shares and cash upon the occurrence of the event requiring such adjustment.

Section 4.5. Par Value; Valid Issuance.

The Company will not increase the par value of the shares of Common Stock above the Exercise Price (as adjusted hereunder from time to time), except to the extent required by applicable law. The Company will take all such corporate action, to the extent permitted by applicable law (including, without limitation, reducing the par value thereof), as may be necessary or appropriate in order that the Company may validly and legally issue stock upon the exercise of Warrants.

ARTICLE V

DECREASE IN EXERCISE PRICE

The Board, in its sole discretion, shall have the right at any time, or from time to time, to decrease the Exercise Price of the Warrants and/or

increase the number of shares issuable upon the exercise of the Warrants.

ARTICLE VI

LOSS OR MUTILATION

Upon receipt by the Company of evidence satisfactory to it of the ownership and the loss, theft, destruction or mutilation of any Warrant Certificate and of indemnity or bond satisfactory to it and (in the case of mutilation) upon surrender and cancellation thereof, then, in the absence of notice to the Company that the Warrants represented thereby have been acquired by a bona fide purchaser, the Company shall execute and deliver to the registered Holder of the lost, stolen, destroyed or mutilated Warrant Certificate, in exchange for or in lieu thereof, a new Warrant Certificate of the same tenor and for a like aggregate number of Warrants. Upon the issuance of any new Warrant Certificate under this Article VI, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and other expenses in connection therewith. Every new Warrant Certificate executed and delivered pursuant to this Article VI in lieu of any lost, stolen or destroyed Warrant Certificate shall constitute a contractual obligation of the Company whether or not the allegedly lost, stolen or destroyed Warrant Certificates shall be at any time enforceable by anyone and shall be entitled to the benefits of this Agreement equally and proportionately with any and all other Warrant Certificates duly executed and delivered hereunder. The provisions of this Article VI are exclusive and shall preclude (to the extent lawful) all other rights or remedies with respect to the replacement of mutilated, lost, stolen, or destroyed Warrant Certificates.

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ARTICLE VII

COVENANTS

Section 7.1. Covenants.

The Company agrees that (a) prior to the date of the Stockholder Approval, (i) it will at all times reserve and keep available, free from liens, charges and security interests and not subject to any preemptive rights, solely for issuance and delivery upon exercise of the Warrants, the Available Shares and (ii) the Available Shares shall be duly authorized and, when issued upon such exercise, shall be validly issued, fully paid and nonassessable, and (b) from and after the date of the Stockholder Approval (i) it will at all times reserve and keep available, free from liens, charges and security interests and not subject to any preemptive rights, solely for issuance and delivery upon exercise of the Warrants, the number of shares of Common Stock from time to time issuable upon exercise of the Warrants at the time outstanding and (ii) all shares of Common Stock issuable upon exercise of the Warrants shall be duly authorized and, when issued upon such exercise, shall be validly issued, fully paid and nonassessable.

ARTICLE VIII

WARRANT TRANSFER BOOKS; RESTRICTIONS ON TRANSFER

Section 8.1. Transfer and Exchange.

The Warrant Certificates shall be issued in registered form only. The Warrants shall not be transferable, except as provided in the next paragraph. The Company shall keep at its office a register for the registration of Warrant Certificates and transfers or exchanges of Warrant Certificates as herein provided.

A Holder may transfer its Warrants only to the Initial Holder and Affiliates of the Initial Holder and only by written application to the Company stating the name of the proposed transferee and otherwise complying with the terms of this Agreement. No such transfer shall be effected until, and such transferee shall succeed to the rights of a Holder only upon, final acceptance and registration of the transfer by the Company in the register. Prior to the registration of any transfer of Warrants by a Holder as provided herein, the Company and any agent of the Company may treat the person in whose name the

Warrants are registered as the owner thereof for all purposes and as the person entitled to exercise the rights represented thereby, any notice to the contrary notwithstanding. When Warrant Certificates are presented to the Company with a request to register the transfer or to exchange them for an equal amount of Warrants of other authorized denominations, the Company shall register such transfer or make such exchange as requested if its requirements for such transactions are met.

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Section 8.2. Special Transfer Provisions.

By its acceptance of any Warrants represented by a Warrant Certificate, each Holder of such Warrants acknowledges the restrictions on transfer of such Warrants set forth in this Agreement and in the Private Placement Legend and agrees that it will transfer such Warrants only as provided in this Agreement. The Company shall not register a transfer of any Warrants unless such transfer complies with the restrictions on transfer of such Warrants set forth in this Agreement. In connection with any transfer of Warrants, each Holder agrees by its acceptance of Warrants to furnish the Company such evidence that the transferee is the Initial Holder or an Affiliate of the Initial Holder and, if such transfer is not being made pursuant to an effective registration statement under the Securities Act, with such certifications, legal opinions or other information as the Company may reasonably require to confirm that such transfer is being made pursuant to an exemption from, or a transaction not subject to, the registration requirements of the Securities Act and otherwise in compliance with this Agreement.

ARTICLE IX

WARRANT HOLDERS

Section 9.1. Warrant Holder Deemed Not a Stockholder.

The Company may deem and treat the registered Holder(s) of the Warrant Certificates as the absolute owner(s) thereof (notwithstanding any notation of ownership or other writing thereon made by anyone), for the purpose of any exercise thereof and for all other purposes, and the Company shall not be affected by any notice to the contrary. Accordingly, the Company shall not, except as ordered by a court of competent jurisdiction as required by law, be bound to recognize any equitable or other claim to or interest in the Warrants on the part of any person other than such registered Holder, whether or not it shall have express or other notice thereof. Prior to the exercise of the Warrants, no Holder of a Warrant Certificate, as such, shall be entitled to any rights of a stockholder of the Company, including, without limitation, the right to vote or to consent to any action of the stockholders, except as otherwise provided in this Agreement, to receive dividends or other distributions, to exercise any preemptive right or to receive any notice of meetings of stockholders and, except as otherwise provided in this Agreement, shall not be entitled to receive any notice of any proceedings of the Company.

Section 9.2. Right of Action.

All rights of action with respect to this Agreement are vested in the Holders of the Warrants, and any Holder of any Warrant, may, on such Holder's own behalf and for such Holder's own benefit, enforce, and may institute and maintain any suit, action or proceeding against the Company suitable to enforce, or otherwise in respect of, such Holder's right to exercise such Warrants in the manner provided in the Warrant Certificate representing such Warrants and in this Agreement.

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ARTICLE X

MISCELLANEOUS

Section 10.1. Payment of Taxes.

Subject to Article VI hereof, all shares of Common Stock purchasable upon the exercise of Warrants shall be validly issued, fully paid and not subject to any calls for funds, and the Company shall pay any taxes and other governmental charges that may be imposed under the laws of the United States of America or any political subdivision or taxing authority thereof or therein in respect of the issue or delivery thereof upon exercise of Warrants (other than taxes on or measured by income imposed on any Holder). The Company shall not be required, however, to pay any tax or other charge imposed in connection with any transfer involved in the issue of any certificate for shares of Common Stock (including other securities or property purchasable upon the exercise of the Warrants) or payment of cash to any Person other than the Holder of a Warrant Certificate surrendered upon the exercise of a Warrant and in case of such transfer or payment, the Company shall not be required to issue any share certificate or pay any cash until such tax or charge has been paid or it has been established to the Company's satisfaction that no such tax or charge is due.

Section 10.2. No Merger, Consolidation or Sale of Assets of the Company.

Except as otherwise provided herein, the Company will not merge into or consolidate with any other Person, or sell or otherwise transfer all or substantially all of its property and assets to any Person, unless the entity resulting from such merger or consolidation, or such Person, shall expressly assume the due and punctual performance and observance of each and every covenant and condition of this Agreement or contained in the Warrants to be performed and observed by the Company.

Section 10.3. Notices; Payment.

(a) Any notice, demand or delivery authorized by this Agreement shall be sufficiently given or made when mailed, if sent by first class mail, postage prepaid, addressed to any Holder of a Warrant at such Holder's last known address appearing on the register of the Company and to the Company as follows:

To the Company:

Akorn, Inc.
2500 Millbrook Drive
Buffalo Grove, Illinois 60089
Fax No.: (347) 279-6191
Attention: Jerry Ellis

or such other address as shall have been furnished to the party giving or making such notice, demand or delivery. Any notice that is mailed in the manner herein

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provided shall be conclusively presumed to have been duly given when mailed, whether or not the Holder receives the notice.

(b) Payment of the Exercise Price shall be made in accordance with the provisions of this Agreement at the principal executive office of the Company set forth above.

(c) Any notice required to be given by the Company to the Holders shall be made by mailing by registered mail, return receipt requested, to the Holders at their last known addresses appearing on the register maintained by the Company. Any notice that is mailed in the manner herein provided shall be conclusively presumed to have been duly given when mailed, whether or not the Holder receives the notice.

Section 10.4. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the Company and its respective successors and assigns, and the Holders from time to time of the Warrants. Nothing in this Agreement is intended or shall be construed to confer upon any Person, other than the Company and the Holders of

the Warrants, any right, remedy or claim under or by reason of this Agreement or any part hereof.

Section 10.5. Counterparts.

This Agreement may be executed manually or by facsimile in any number of counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

Section 10.6. Amendments.

Any provision of this Agreement may be amended or modified in whole or in part at any time by an agreement in writing among the Company and the Holder of the Warrant. No Failure on the part of either the Company or the Holder of the Warrant to exercise, and no delay in exercising, any right shall operate as a waiver thereof nor shall any single or partial exercise by either the Company or the Holder of the Warrant of any right preclude any other or future exercise thereof or the exercise of any other right.

Section 10.7. Headings.

The descriptive headings of the several Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 10.8. Common Stock Legend.

Unless and until the Common Stock purchasable upon the exercise of the Warrants are registered under the Securities Act, or unless

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otherwise agreed by the Company and the Holder thereof, such shares of Common Stock will bear a legend to the following effect:

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES.

Section 10.9. Termination.

Unless terminated earlier pursuant to this Agreement, this Agreement shall terminate at 5:00 p.m. (New York City time) on the Expiration Date. Notwithstanding the foregoing, this Agreement shall terminate on any earlier date as of which all Warrants have been exercised.

Section 10.10. Method of Payment.

The U.S. dollar is the sole currency of account and payment for all sums payable by the Company or the Holders under or in connection with the Warrants, including damages.

Section 10.11. Governing Law.

This Agreement shall be governed by the laws of the State of New York. The Company and the Holders agree to submit to the jurisdiction of the courts of the State of New York in any action or proceeding arising out of or related to this Agreement or the Warrants.

(signature page follows)

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

AKORN, INC.

By: _____
Bernard J. Pothast, Senior Vice
President, Chief Financial Officer,
Secretary and Treasurer

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

By: _____
Name:
Title:

EXHIBIT A

FORM OF WARRANT CERTIFICATE

THE SECURITIES EVIDENCED HEREBY ARE NOT TRANSFERABLE, EXCEPT IN ACCORDANCE WITH THE WARRANT AGREEMENT.

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES.

AKORN, INC.

[-----]

No. _____

WARRANTS TO PURCHASE COMMON STOCK

This certifies that [_____] or its registered assigns, is the owner of _____ Warrants, each of which represents the right to purchase from Akorn, Inc., a Louisiana corporation (the "Company"), at any time beginning _____, 200_ and prior to the Expiration Date (as defined in the Warrant Agreement referred to below), _____ shares of the common stock, no par value per share, of the Company (the "Common Stock") at a per share exercise price (the "Exercise Price") equal to \$_____ (subject to adjustment as provided in the Warrant Agreement), upon surrender hereof at the Company, with the Subscription Form on the reverse hereof duly executed with simultaneous payment in full by wire transfer of immediately available funds or by certified or official bank or bank cashier's check payable to the order of the Company. At any time on or before the Expiration Date, any outstanding Warrants may be exercised on any Business Day (as defined in the Warrant Agreement); provided that the Holders of Warrants shall be able to exercise their Warrants only if the exercise of such Warrants is exempt from the registration requirements of the Securities Act of 1933, as amended, as reasonably determined by the Company, and such securities are qualified for sale or exempt from qualification under the applicable securities laws of the states or other jurisdictions in which such Holder resides.

This Warrant Certificate is issued under and in accordance with a Warrant Agreement dated as of October [], 2003 (the "Warrant Agreement"),

between the Company and [], and is subject to the Articles of Incorporation of the Company and to the terms and provisions contained therein, to all of which terms and provisions the holder of this Warrant Certificate consents by acceptance hereof. The terms of the Warrant Agreement and the Registration Rights Agreement are hereby incorporated herein by reference and made a part hereof. Reference is hereby made to the Warrant Agreement for a full description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Company and the Holders of the Warrants. The summary of the terms of the Warrant Agreement and the Registration Rights Agreement contained in this Warrant Certificate is subject to and qualified in its entirety by express reference to the Warrant Agreement and the Registration Rights Agreement. To the extent permitted by applicable law, in the event of any inconsistency between the terms of this Warrant and the terms of the Warrant Agreement, the terms of the Warrant Agreement shall govern. All terms used in this Warrant Certificate that are defined in the Warrant Agreement and the Registration Rights Agreement shall have the meanings assigned to them in such agreements.

This Warrant Certificate shall be void and all rights evidenced hereby shall cease on the Expiration Date, unless sooner terminated by the liquidation, dissolution or winding-up of the Company or as otherwise provided in the Warrant Agreement upon the consolidation or merger of the Company with, or sale of the Company to, another Person or unless such date is extended as provided in the Warrant Agreement.

The Warrant Agreement and the Warrants shall be governed by the laws of the State of New York. The Company and the Holders agree to submit to the jurisdiction of the courts of the State of New York in any action or proceeding arising out of or related to this Agreement or the Warrants.

AKORN, INC.

By: _____
Name:
Title:

Dated: _____, 200_

FORM OF REVERSE OF WARRANT CERTIFICATE

SUBSCRIPTION FORM

(To be executed only upon exercise of Warrant)

To: Akorn, Inc.
2500 Millbrook Drive
Buffalo Grove, Illinois 60089
Telecopier No.: (847) 279-6191

Attention: Jerry Ellis

The undersigned irrevocably exercises _____ of the Warrants represented by this Warrant Certificate and herewith makes payment of \$ _____ (such payment being in cash or by certified or official bank or bank cashier's check payable to the order or at the direction of Akorn, Inc. or pursuant to a Cashless Exercise on the terms and conditions specified in this Warrant Certificate and in the Warrant Agreement referred to herein) and surrenders this Warrant Certificate and all right, title and interest therein to and directs that the common stock, no par value per share, of Akorn, Inc. (the "Common

Stock") deliverable upon the exercise of such Warrants be registered or placed in the name and at the address specified below and delivered thereto.

Dated: _____

(Signature of Owner)

(Street Address)

(City) (State) (Zip Code)

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FORM OF ASSIGNMENT

The undersigned registered Holder of this Warrant Certificate hereby sells, assigns, and transfers unto the Assignee(s) named below (including the undersigned with respect to any Warrants constituting a part of the Warrants evidenced by this Warrant Certificate not being assigned hereby) all of the right of the undersigned under this Warrant Certificate, with respect to the number of Warrants set forth below:

Name(s) of Assignee(s): _____

Address: _____

No. of Warrants: _____

Please insert social security or other identifying number of assignee(s):

and does hereby irrevocably constitute and appoint the Secretary of Akorn, Inc. the undersigned's attorney to make such transfer on the books of Akorn, Inc. maintained for the purposes, with full power of substitution in the premises.

In connection with any transfer of Warrants, the undersigned confirms that the transfer of the Warrants is exempt from registration under the Securities Act of 1933, as amended, and that the Assignee(s) is the Initial Holder or an Affiliate of the Initial Holder. The undersigned understands that the Company shall not be obligated to register the Warrants in the name of any Person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in Article VIII of the Warrant Agreement shall have been satisfied.

Dated: _____

(Signature of Owner)

(Street Address)

(City) (State) (Zip Code)

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WARRANT AGREEMENT

WARRANT AGREEMENT, dated as of October 7, 2003 (this "Agreement"), between Akorn, Inc., a Louisiana corporation (the "Company"), and The John N. Kapor Trust dtd 9/20/89 (the "Initial Holder"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

W I T N E S S E T H :

WHEREAS, pursuant to the Preferred Stock and Note Purchase Agreement, dated as of September 25, 2003, by and among the Company and the purchasers listed on the signature pages thereto (the "Purchase Agreement"), the Company will issue a note (the "Purchased Note"), to the Initial Holder.

WHEREAS, pursuant to the terms of the Purchased Note, the Company desires to grant to the Initial Holder warrants to purchase up to 211,714 shares of Common Stock (as defined below);

WHEREAS, this Agreement governs the issuance of the Warrant Certificates (as defined below) and the other matters as provided herein, including, without limitation, for the purpose of defining the terms and provisions of the Warrants (as defined below) and the respective rights and obligations thereunder of the Company and the Initial Holder together with any subsequent record holders thereof (together with the holders of shares of Common Stock (or other securities) received upon exercise thereof, the "Holders").

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements contained herein, the Company and the Initial Holder hereby agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

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

"Additional Shares" has the meaning specified in Section 4.1(a)(ii) hereof.

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"Affiliate" of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Available Shares" means the 12,883,000 shares of Common Stock the Company currently has duly authorized and available to be reserved for issuance upon exercise of the Warrants.

"Board" means the board of directors of the Company from time to time.

"Business Day" means a day except a Saturday, Sunday or other day on which commercial banks in The City of New York, are authorized by law to close.

"Cashless Exercise" has the meaning specified in Section 3.3 hereof.

"Cashless Exercise Ratio" has the meaning specified in Section 3.3 hereof.

"Closing Date" means the date hereof.

"Common Stock" means the common stock, no par value per share, of the Company, and any other capital stock of the Company into which such Common Stock may be converted or reclassified or that may be issued in respect of, in exchange for, or in substitution of, such Common Stock by reason of any stock splits, stock dividends, distributions, mergers, consolidations or other like events.

"Convertible Securities" means any options or warrants to purchase or rights to subscribe for shares of Common Stock, securities by their terms convertible into or exchangeable for shares of Common Stock, or options or warrants to purchase or rights to subscribe for such convertible or exchangeable securities.

"Current Market Value" has the meaning specified in Section 3.3 hereof.

"Exchange Act" means the United States Securities Exchange Act of 1934, as amended.

"Excluded Issuances" means the issuance or reissuance of any shares of Common Stock or Convertible Securities (whether treasury shares or newly issued shares) pursuant to or in connection with (1) a dividend or distribution on, or subdivision, combination, consolidation or reclassification of, the outstanding Common Stock requiring an adjustment in the Exercise Price pursuant to Section 4(a) (i), (2) any Convertible Security outstanding as of the Closing Date,

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including, without limitation, the Preferred Stock Warrants (except as otherwise provided in Section 4.1(a) (iv) (5) (D)), (3) the exercise of Warrants, (4) the grant or exercise of any stock or stock options to employees, directors or consultants of the Company that may be granted to or exercised by any employee, director or consultant under any stock option or similar benefit plan of the Company now existing or to be implemented in the future, (5) any transaction involving the Company's issuance of securities in connection with an acquisition (the primary purpose of which is not to raise equity capital), (6) any transaction involving the Company's issuance of securities in connection with any strategic partnership or joint venture (the primary purpose of which is not to raise equity capital), (7) any issuance of securities by the Company as consideration for the acquisition of a license by the Company, (8) the issuance of securities pursuant to any financing from a bank or similar financial or lending institution approved by the Board; or (9) the issuance of warrants to purchase Common Stock pursuant to the Guaranty Warrant Agreements; provided, however, that issuances of securities described in the forgoing sub-clauses (4), (6), (7) and (8) subsequent to the Closing Date which exceed, in the aggregate, 10% of the outstanding Common Stock of the Corporation outstanding as of the Closing Date (as adjusted for any split, subdivision, combination, consolidation, recapitalization or similar event with respect to the Common Stock), as determined on a fully-diluted basis, shall not be deemed to be Excluded Issuances.

"Exercise Date" means the date upon which a Holder exercises a Warrant or Warrants in accordance with Section 3.2.

"Exercise Price" has the meaning specified in Section 3.1 hereof.

"Expiration Date" means the third anniversary of the date of this Agreement.

"Fair Market Value" with respect to any securities, assets or property means the fair value thereof as determined by an independent investment banking or appraisal firm experienced in the valuation of such securities or property; provided that the value of any securities that trade on a national securities exchange or inter-dealer quotation system shall be the Current Market Value thereof as of the date such value is determined.

"Guaranty Warrant Agreement" means (a) the Warrant Agreement, dated as of October 7, 2003, between the Company and The John N. Kapoor Trust, dtd 9/20/89 and (b) the Warrant Agreement, dated as of October 7, 2003, between the Company and Arjun Waney, whereby in consideration for having such parties enter into a personal guaranty under the Company's credit facility, the Company will grant warrants to such parties.

"Holders" has the meaning specified in the recitals to this Agreement.

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"Laws" shall include all foreign, federal, state and local laws, statutes, ordinances, rules, regulations, orders, judgments, decrees and bodies of law.

"Parent" means any Person of which the Company is a direct or indirect subsidiary.

"Person" means an individual, corporation, partnership, limited liability company, joint venture association, joint-stock company trust, unincorporated organization, government or agency thereof.

"Preferred Stock Warrants" has the meaning ascribed thereto in the Purchase Agreement. "Private Placement Legend" means the legend set forth on the Warrant Certificates in the form set forth in Section 2.3.

"Purchase Agreement" has the meaning specified in the recitals to this Agreement.

"Purchased Note" has the meaning specified in the recitals to this Agreement.

"Purchaser Representative" means the person designated to act as the representative of the purchasers listed on the signature pages of the Purchase Agreement, pursuant to the Purchaser Representative Agreement, dated as of the date hereof, who initially will be John N. Kapoor.

"Proxy Statement" means the proxy statement distributed to the Company's stockholders in connection with the Stockholder's Meeting.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the United States Securities Act of 1933, as amended.

"Stockholder Approval" shall have the meaning ascribed thereto in the Purchase Agreement.

"Subscription Form" means the form on the reverse side of the Warrant Certificate substantially in the form of Exhibit A hereto.

"Subsidiaries" or "Subsidiary" shall mean the collective reference to all direct or indirect subsidiaries of the Company.

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

"Transaction" has the meaning specified in Section 4.1(b)(i) hereof.

"Warrants" has the meaning specified in Section 2.1 hereof.

"Warrant Certificates" has the meaning specified in Section 2.2 hereof.

ARTICLE II

ISSUE OF WARRANTS

Section 2.1. Issuance of Warrants.

The Company hereby agrees to issue to the Initial Holder on the Closing Date warrants (the "Warrants") to purchase from the Company 211,714 shares of the Company's Common Stock at the Exercise Price.

Section 2.2. Form of Warrant Certificates.

Certificates representing the Warrants (the "Warrant Certificates") shall be in the form attached hereto as Exhibit A, shall be dated the Closing Date and shall have such insertions as are appropriate or required or permitted by this Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements stamped, printed, lithographed or engraved thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any Laws or to conform to custom or usage.

Section 2.3. Restrictive Legends.

The Warrant Certificates shall bear the following legend on the face thereof:

THE SECURITIES EVIDENCED HEREBY ARE NOT TRANSFERABLE, EXCEPT IN ACCORDANCE WITH THE WARRANT AGREEMENT.

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES

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ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES.

ARTICLE III

EXERCISE PRICE, EXERCISE, REPURCHASE OF WARRANTS AND REGISTRATION RIGHTS

Section 3.1. Exercise Price.

Each Warrant Certificate shall initially entitle the Holder thereof, subject to the provisions of this Agreement, to purchase the number of shares of Common Stock indicated thereon at a per share purchase price (the "Exercise Price") equal to \$1.10, subject to adjustment as provided in Section 4.1 and Article V hereof.

Section 3.2. Exercise; Restrictions on Exercise.

At any time after the Closing Date and prior to 5:00 p.m. (New York City time) on the Expiration Date, any outstanding Warrants may be exercised on any Business Day; provided that Holders of Warrants will be able to exercise their Warrants only if the exercise of such Warrants is exempt from the registration requirements of the Securities Act, as reasonably determined by the Company, and such securities are qualified for sale or exempt from qualification under the applicable securities laws of the states or other jurisdictions in which such Holders reside. Any Warrants not exercised by 5:00 p.m., New York City time, on the Expiration Date shall expire and all rights of the Holders of such Warrants shall terminate. Additionally, pursuant to Section 4.1(b)(ii) hereof, the Warrants shall expire and all rights of the Holders of such Warrants shall terminate in the event the Company merges or consolidates with or sells all or substantially all of its property and assets to a Person (other than an Affiliate of the Company) if the consideration payable to holders of Common Stock in exchange for their Common Stock in connection with such merger, consolidation or sale consists solely of cash or in the event of the dissolution, liquidation or winding up of the Company.

Section 3.3. Method of Exercise; Payment of Exercise Price.

In order to exercise all or any of the Warrants represented by a Warrant Certificate, the Holder thereof must surrender for exercise the Warrant Certificate to the Company at its principal executive office, with the Subscription Form set forth on the reverse of the Warrant Certificate duly executed, together with payment in full of the Exercise Price then in effect for each share of Common Stock (or other securities) purchasable upon exercise of the Warrants as to which a Warrant is exercised; such payment may be made (i) in

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cash or by certified or official bank check payable to the order of the Company or by wire transfer of immediately available funds to an account designated by the Company for such purpose, (ii) without the payment of cash (a "Cashless Exercise"), by reducing the number of shares of Common Stock that would be obtainable upon the exercise of a Warrant and payment of the Exercise Price in cash so as to yield a number of shares of Common Stock upon the exercise of such Warrant equal to the product of (a) the number of shares of Common Stock for which such Warrant is exercisable as of the date of exercise (if the Exercise Price were being paid in cash) and (b) the Cashless Exercise Ratio, or (iii) a combination of (i) and (ii).

The "Cashless Exercise Ratio" shall equal a fraction, the numerator of which is the excess of the Current Market Value per share of Common Stock on the Exercise Date over the Exercise Price per share as of the Exercise Date and the denominator of which is the Current Market Value per share of the Common Stock on the Exercise Date. Upon surrender of a Warrant Certificate representing more than one Warrant in connection with the Holder's option to elect a Cashless Exercise, the number of shares of Common Stock deliverable upon a Cashless Exercise shall be equal to the number of shares of Common Stock issuable upon the exercise of Warrants that the Holder specifies are to be exercised pursuant to a Cashless Exercise multiplied by the Cashless Exercise Ratio. All provisions of this Agreement shall be applicable with respect to a surrender of a Warrant Certificate pursuant to a Cashless Exercise for less than the full number of Warrants represented thereby.

The "Current Market Value" per share of Common Stock on any date shall be the closing sale price on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Common Stock or such other securities are listed or admitted to trading or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the last quoted sale price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or such other system then in use, or, if on any such date the Common Stock or such other securities are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker, selected by the Board and reasonably acceptable to the Holder, making a market in the Common Stock or such other securities of the Company.

If less than all the Warrants represented by a Warrant Certificate are exercised, such Warrant Certificate shall be surrendered and a new Warrant Certificate of the same tenor and for the number of Warrants which were not exercised shall be executed by the Company and delivered to the Holder. Upon the exercise of any Warrants following the surrender of a Warrant Certificate in conformity with the foregoing provisions, the Company shall transfer promptly to the Holder appropriate evidence of ownership of any shares of Common Stock or other securities or property to which the Holder is entitled

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as a result of exercise, at the Company's option, an amount in cash, in lieu of any fractional shares, as provided in Section 4.3 hereof.

Upon the exercise of a Warrant or Warrants, the Company shall as promptly as practicable but not later than 14 Business Days after such exercise enter, or cause any transfer agent of the shares of Common Stock to enter, the name of the person entitled to receive the shares of Common Stock

upon exercise of such Warrants into the Company's register of stockholders. Thereupon, the Company or the applicable transfer agent shall issue certificates for the necessary number of shares of Common Stock to which said Holder is entitled.

A Warrant shall be deemed by the Company to be exercised immediately prior to the close of business on the date of surrender for exercise, as provided above, of the Warrant Certificate representing such Warrant and, for all purposes under this Agreement, the Holder shall receive the shares of Common Stock the Holder would have been entitled to had it been the registered Holder on such date, except that for purposes of transferring the shares of Common Stock or voting in a general stockholders' meeting, the Holder shall, in its relation with the Company, be deemed to be the Holder thereof only when such shares of Common Stock are entered in the register of stockholders in the name of such person; provided, however, that, with respect to Warrants which have been exercised but for which the corresponding shares of Common Stock have not been recorded in the register of stockholders, the provisions of Article IV shall continue to apply as if the number of Warrants held prior to exercise remained outstanding on the date of any action or event of the type giving rise to an adjustment under Article IV.

Section 3.4. Registration Rights.

The shares of Common Stock issuable upon exercise of the Warrants shall have the registration rights as set forth in the Registration Rights Agreement, dated as of October 7, 2003, by and among the Company and the parties listed on the signature pages thereto.

ARTICLE IV

ADJUSTMENTS

Section 4.1. Adjustments.

The Exercise Price and the number of shares of Common Stock (or other securities) purchasable upon exercise of each Warrant shall be subject to adjustment from time to time as follows (subject in each case to Section 4.1(a) (vi) hereof):

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

(i) Stock Dividends, Splits, etc. In case the Company shall at any time or from time to time after the Closing Date (A) declare a dividend or make a distribution on the outstanding shares of

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Common Stock or securities convertible into Common Stock, in either case, in shares of Common Stock or (B) effect a subdivision, combination, consolidation or reclassification of the outstanding shares of Common Stock into a greater or lesser number of shares of Common Stock, then, and in each such case, the Exercise Price in effect immediately prior to such event or the record date therefor, whichever is earlier, shall be adjusted by multiplying such Exercise Price by a fraction of which (x) the numerator is the number of shares of Common Stock that were outstanding immediately prior to such event and (y) the denominator is the number of shares of Common Stock outstanding immediately after such event. An adjustment made pursuant to this Section 4(a)(i) shall become effective (x) in the case of any such dividend or distribution, immediately after the close of business on the date for the determination of holders of shares of Common Stock entitled to receive such dividend or distribution, or (y) in the case of any such subdivision, combination, consolidation or reclassification, at the close of business on the day upon which such corporate action becomes effective.

(ii) Below Market or Conversion Price Issuances. In case the Company shall at any time or from time to time after the Closing Date issue or sell any Common Stock or Convertible Security (collectively, "Additional Shares") without consideration or for a

consideration per share (or having a conversion, exchange or exercise price per share) less than the greater of (A) the Current Market Value per share of Common Stock on the Business Day immediately preceding the earlier of the issuance, or public announcement of the issuance, of such Additional Shares and (B) the Exercise Price as of the date of such issuance then, and in each such case, the Exercise Price shall be reduced to an amount determined by multiplying the Exercise Price in effect on the day immediately prior to such date by a fraction of which (x) the numerator is the sum of (i) the product of (A) the number of shares of Common Stock outstanding immediately prior to such sale or issuance multiplied by (B) the greater of (1) the then applicable Exercise Price per share and (2) the Current Market Value per share of Common Stock on the date preceding the earlier of the issuance or public announcement of the issuance of such Additional Shares (the greater of (1) and (2) above hereinafter referred to as the "Adjustment Price") and (ii) the aggregate consideration receivable by the Company for the total number of shares of Common Stock so issued (or into or for which the Convertible Securities are convertible, exercisable or exchangeable), and (y) the denominator equals the product of (i) the sum of (A) the total number of shares of Common Stock outstanding immediately prior to such sale or issue and (B) the number of additional shares of Common Stock issued (or into or for which the Convertible Securities may be converted, exercised or exchanged), multiplied by (ii) the Adjustment Price. An adjustment made pursuant to this subsection (ii) shall be made on the next Business Day following the date on which any such issuance is made and shall be effective

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retroactively to the close of business on the date of such issuance. Notwithstanding the foregoing, no adjustment (other than as provided for in Section 4(a)(iv)(5)(D)) shall be made pursuant to this Section 4(a)(ii) in connection with any Excluded Issuances.

(iii) Special Dividends; Repurchases. In case the Company after the Closing Date shall (1) distribute to all holders of shares of Common Stock evidences of its indebtedness, assets (excluding any regular periodic cash dividend but including any extraordinary cash dividend), capital stock (other than Common Stock) or rights to subscribe for capital stock (other than Common Stock), or (2) purchase or otherwise acquire for value any shares of Common Stock in an Above Market Repurchase, in each such case the Exercise Price in effect immediately prior to the date of such distribution (or the date immediately prior to the date of the public announcement of such distribution, whichever is earlier) or date of such purchase (or the date immediately prior to the date of the public announcement of such purchase), as applicable, shall be adjusted by multiplying such Exercise Price by a fraction of which (x) the numerator is the remainder (if greater than zero) of (i) the Current Market Value per share of Common Stock on such date, minus (ii) the Fair Market Value as of such date of the portion of assets, evidences of indebtedness, capital stock or subscription rights so distributed or paid applicable to one share of Common Stock, and (y) the denominator is the Current Market Value per share of Common Stock on such date, such adjustment to become effective immediately prior to the opening of business on the day following the date of distribution or purchase; provided, however, that no adjustment shall be made pursuant to clause (1) of this subparagraph (a)(iii) (A) if such issuance is an Excluded Issuance or (B) if an adjustment shall otherwise be made with respect to such distribution or issuance pursuant to Section 4.1(a)(ii); and further provided, however, that if in any case the numerator of such fraction shall be zero or less than zero, no adjustment shall be made in such case. The Company shall provide any Holder, upon receipt of a written request therefor, with any indenture or other instrument defining the rights of the holders of any indebtedness, assets, subscription rights or capital stock referred to in this subparagraph (a)(iii).

(iv) General. For the purposes of any adjustment of the Exercise Price pursuant to paragraph (ii) of this Section 4.1(a), the following provisions shall be applicable:

(1) In the case of the issuance of Common Stock or Convertible Securities for cash in a public offering or

private placement, the aggregate consideration shall be deemed to be the amount of cash paid before deducting any discounts, commissions or

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placement fees payable by the Company to any underwriter or placement agent in connection with the issuance and sale thereof.

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

(3) Subparagraph (2) above notwithstanding, in the case of the issuance of Additional Shares to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving corporation, the amount of consideration therefore shall be deemed to be the Fair Market Value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock or Convertible Securities, as the case may be.

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

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

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

(B) With respect to any Convertible Securities issued after the Closing Date for which an adjustment to the Exercise Price previously has been made pursuant to Section 4.1(a)(ii), on any increase in the number of shares of Common Stock deliverable upon exercise, conversion or exchange of, or a decrease in the exercise price of, such Convertible Securities other than a change resulting from the anti-dilution provisions thereof, the applicable

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Exercise Price shall forthwith be readjusted retroactively to give effect to such increase or decrease;

(C) With respect to any Convertible Securities issued after the Closing Date for which an adjustment to the Exercise Price has previously not been made pursuant to Section 4.1(a)(ii), if there is any increase in the number of shares of Common Stock deliverable upon exercise, conversion or exchange of, or a decrease in the exercise price of, such Convertible Securities other than a change resulting from the anti-dilution provisions thereof, such Convertible Securities shall be treated as if they had been cancelled and reissued and an adjustment to the Exercise Price with respect to such deemed issuance shall be made pursuant to Section 4.1(a)(ii), if applicable;

(D) With respect to any Convertible Securities issued prior to the Closing Date, if there is any increase in the number of shares of Common Stock deliverable upon exercise, conversion or exchange of, or a decrease in the exercise price of, such Convertible Securities other than a change resulting from the anti-dilution provisions thereof, such Convertible Securities shall be treated as if they had been cancelled and reissued and an adjustment to the Exercise Price with respect to such deemed issuance shall be made pursuant to Section 4.1(a)(ii), if applicable; and

(E) No further adjustment of the Exercise Price adjusted upon the issuance of any such Convertible Securities shall be made as a result of the actual issuance of Common Stock upon the exercise, conversion or exchange of any such Convertible Securities.

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

(vi) Calculations. All calculations of the Exercise Price shall be made to the nearest five decimal places. Anything in Section 4.1(a) to the contrary notwithstanding, in no event shall the

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then current Exercise Price be increased as a result of any calculation made at any time pursuant to Sections 4.1(a)(ii) through 4.1(a)(iv). No adjustment to the Exercise Price pursuant to paragraph 4.1(a) shall be required unless such adjustment would require an increase or decrease of at least 1% in the Exercise Price; provided, however, that any adjustments which by reason ----- of this paragraph 4.1(a)(vi) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. Notwithstanding any other provision of this Section 4.1(a), no adjustment to the Exercise Price shall reduce the Exercise Price below \$0.01, and any such purported adjustment shall instead reduce the Exercise Price to \$0.01.

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

(viii) Successive Adjustments. Successive adjustments in the Exercise Price shall be made, without duplication, whenever any event specified in Sections 4.1(a)(i) through 4.1(a)(iii) shall occur.

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

(i) In case of any capital reorganization or reclassification of outstanding shares of Common Stock (other than a reclassification covered by Section 4.1(a)), or in case of any consolidation or merger of the Company with or into another Person, or in case of any sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation) of all or substantially all of the Company's assets, on a consolidated basis, in one transaction or a series of related transactions, to any Person (including any group that is deemed to be a Person) (each of the foregoing being referred to as a "Transaction"), in each case which is effected in such a manner that the holders of Common Stock are entitled

to receive (either directly or upon subsequent liquidation) stock or other securities or property (including cash) with respect to or in exchange for Common Stock, Warrants then outstanding shall thereafter be convertible into, in lieu of the Common Stock issuable upon such conversion prior to the consummation of such Transaction, the kind and amount of shares of stock and other securities and property (including cash) receivable upon the consummation of such Transaction by a holder of that number of shares of Common Stock into which such Holder's Warrants were exercisable (without regard to any limitation on exercise contained herein, the availability of authorized and unissued shares

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for issuance upon exercise, or otherwise) immediately prior to the consummation of such Transaction. In any such case, the Company or the Person formed by the consolidation or resulting from the merger or which acquires such assets or which acquires the Company's shares, as the case may be, shall make or cause to be made appropriate provisions (as determined in good faith by the Board) in the applicable agreement of merger or consideration, its certificate or articles of incorporation or other constituent documents to ensure that the provisions of this Agreement will continue to be applicable to the Warrants or any such other shares of stock and other securities (other than Common Stock) and property deliverable upon exercise of the Warrants remaining outstanding following the Transaction. In case securities or property other than Common Stock shall be issuable or deliverable upon conversion as aforesaid, then all references in this Section 4.1 shall be deemed to apply, so far as appropriate and as nearly as may be, to such other securities or property. The provisions of this Section 4.1(b) shall similarly apply to successive Transactions. The Company shall give written notice to the Holders at least 30 days prior to the date on which any Transaction or similar transaction affecting the Company shall take place.

(ii) Notwithstanding the foregoing, (x) if the Company merges or consolidates with, or sells all or substantially all of its property and assets to, another Person and consideration is payable to holders of Common Stock in exchange for their shares of Common Stock in connection with such merger, consolidation or sale which consists solely of cash, or (y) in the event of the dissolution, liquidation or winding up of the Company, then the Holders of Warrants shall be entitled to receive payments or distributions as of the date of such event on an equal basis with, and on the same day as, holders of shares of Common Stock (or other securities purchasable upon exercise of the Warrants) as if the Warrants had been exercised immediately prior to such event, less an amount equal to the Exercise Price. Upon receipt of such payment, if any, the rights of a Holder shall terminate and cease and such Holder's Warrants shall expire. In case of any such merger, consolidation or sale of assets, the surviving or acquiring Person or, in the event of any dissolution, liquidation or winding up of the Company, after receipt of surrendered Warrant Certificates from the Holder, the Company shall make payment by delivering a check in such amount as is appropriate (or, in the case of consideration other than cash, such other consideration as is appropriate) to the Holder.

(iii) Notwithstanding anything contained herein to the contrary, the Company will not effect any Transaction unless, prior to the consummation thereof, the Surviving Person, if other than the Company, shall mail, by first-class mail, postage prepaid, to each Holder at such Holder's address as it appears on the transfer books of the Company, (A) a written instrument assuming the obligation to

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deliver to such Holder such cash, property and securities to which, in accordance with the foregoing provisions, such Holder is entitled, and (B) an opinion of outside counsel for such Surviving Person stating that such assumption agreement is a valid, binding and enforceable agreement of the Surviving Person.

(iv) Nothing contained in this Section 4.1(b) shall limit the rights of the Holders to exercise the Warrants.

Section 4.2. Notice of Consolidation, Merger, Etc.

In case at any time after the date hereof and prior to 5:00 p.m., New York City time, on the Expiration Date, there shall be any (i) consolidation or merger involving the Company or sale, transfer or other disposition of all or substantially all of the Company's property, assets or business (except a merger or other reorganization in which the Company shall be the surviving corporation and holders of Common Stock receive no consideration in respect of their shares) or (ii) any other transaction contemplated by Section 4.1(b)(i) above, then, in any one or more of such cases, the Company shall mail, at the Company's expense, to the Holders, at the earliest practicable time (and, in any event, not less than 20 days before any date set for definitive action), notice of the date on which such reorganization, sale, consolidation, merger, dissolution, liquidation or winding up shall take place, as the case may be. Such notice shall also set forth such facts as shall indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the Exercise Price and the kind and amount of the shares of Common Stock and other securities, money and other property deliverable upon exercise of the Warrants. Such notice shall also specify the date as of which the holders of record of the shares of Common Stock or other securities or property purchasable upon exercise of the Warrants shall be entitled to exchange their shares for securities, money or other property deliverable upon such reorganization, sale, consolidation, merger, dissolution, liquidation or winding up, as the case may be.

Section 4.3. Fractional Interests.

In connection with the exercise of any Warrant pursuant to Section 4.1, no fractions of shares of Common Stock shall be issued, but in lieu thereof the Company shall pay a cash adjustment in respect of such fractional interest in an amount equal to such fractional interest multiplied by the Current Market Value per share of Common Stock on the day on which such Warrants are deemed to have been exercised. If more than one Warrant shall be surrendered for exercise at one time by the same Holder, the number of full shares of Common Stock issuable upon exercise thereof shall be computed on the basis of the total number of Warrants so surrendered.

Section 4.4. When Issuance or Payment May Be Deferred.

In any case in which this Article IV shall require that an adjustment in the Exercise Price be made effective as of a record date for a specified event, the Company may elect to defer until the occurrence of such

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event (i) issuing to the Holder of any Warrant exercised after such record date the shares of Common Stock and other shares in the capital of the Company, if any, purchasable upon such exercise over and above the shares of Common Stock and other shares in the capital of the Company, if any, purchasable upon such exercise and (ii) paying such Holder any amount in cash in lieu of a fractional share; provided, however, that the Company shall deliver to such Holder a due bill or other appropriate instrument evidencing such Holder's right to receive such additional shares of Common Stock, other shares and cash upon the occurrence of the event requiring such adjustment.

Section 4.5. Par Value; Valid Issuance.

The Company will not increase the par value of the shares of Common Stock above the Exercise Price (as adjusted hereunder from time to time), except to the extent required by applicable law. The Company will take all such corporate action, to the extent permitted by applicable law (including, without limitation, reducing the par value thereof), as may be necessary or appropriate in order that the Company may validly and legally issue stock upon the exercise of Warrants.

DECREASE IN EXERCISE PRICE

The Board, in its sole discretion, shall have the right at any time, or from time to time, to decrease the Exercise Price of the Warrants and/or increase the number of shares issuable upon the exercise of the Warrants.

ARTICLE VI

LOSS OR MUTILATION

Upon receipt by the Company of evidence satisfactory to it of the ownership and the loss, theft, destruction or mutilation of any Warrant Certificate and of indemnity or bond satisfactory to it and (in the case of mutilation) upon surrender and cancellation thereof, then, in the absence of notice to the Company that the Warrants represented thereby have been acquired by a bona fide purchaser, the Company shall execute and deliver to the registered Holder of the lost, stolen, destroyed or mutilated Warrant Certificate, in exchange for or in lieu thereof, a new Warrant Certificate of the same tenor and for a like aggregate number of Warrants. Upon the issuance of any new Warrant Certificate under this Article VI, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and other expenses in connection therewith. Every new Warrant Certificate executed and delivered pursuant to this Article VI in lieu of any lost, stolen or destroyed Warrant Certificate shall constitute a contractual obligation of the Company whether or not the allegedly lost, stolen or destroyed Warrant Certificates shall be at any time enforceable by anyone and shall be entitled to the benefits of this Agreement equally and proportionately

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with any and all other Warrant Certificates duly executed and delivered hereunder. The provisions of this Article VI are exclusive and shall preclude (to the extent lawful) all other rights or remedies with respect to the replacement of mutilated, lost, stolen, or destroyed Warrant Certificates.

ARTICLE VII

COVENANTS

Section 7.1. Covenants.

The Company agrees that (a) prior to the date of the Stockholder Approval, (i) it will at all times reserve and keep available, free from liens, charges and security interests and not subject to any preemptive rights, solely for issuance and delivery upon exercise of the Warrants, the Available Shares and (ii) the Available Shares shall be duly authorized and, when issued upon such exercise, shall be validly issued, fully paid and nonassessable, and (b) from and after the date of the Stockholder Approval (i) it will at all times reserve and keep available, free from liens, charges and security interests and not subject to any preemptive rights, solely for issuance and delivery upon exercise of the Warrants, the number of shares of Common Stock from time to time issuable upon exercise of the Warrants at the time outstanding and (ii) all shares of Common Stock issuable upon exercise of the Warrants shall be duly authorized and, when issued upon such exercise, shall be validly issued, fully paid and nonassessable.

ARTICLE VIII

WARRANT TRANSFER BOOKS; RESTRICTIONS ON TRANSFER

Section 8.1. Transfer and Exchange.

The Warrant Certificates shall be issued in registered form only. The Warrants shall not be transferable, except as provided in the next paragraph. The Company shall keep at its office a register for the registration of Warrant Certificates and transfers or exchanges of Warrant Certificates as herein provided.

A Holder may transfer its Warrants only to the Initial Holder and Affiliates of the Initial Holder and only by written application to the

Company stating the name of the proposed transferee and otherwise complying with the terms of this Agreement. No such transfer shall be effected until, and such transferee shall succeed to the rights of a Holder only upon, final acceptance and registration of the transfer by the Company in the register. Prior to the registration of any transfer of Warrants by a Holder as provided herein, the Company and any agent of the Company may treat the person in whose name the Warrants are registered as the owner thereof for all purposes and as the person entitled to exercise the rights represented thereby, any notice to the contrary notwithstanding. When Warrant Certificates are presented to the Company with a request to register the transfer or to exchange them for an equal amount of Warrants of other authorized denominations, the Company shall register such

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transfer or make such exchange as requested if its requirements for such transactions are met.

Section 8.2. Special Transfer Provisions.

By its acceptance of any Warrants represented by a Warrant Certificate, each Holder of such Warrants acknowledges the restrictions on transfer of such Warrants set forth in this Agreement and in the Private Placement Legend and agrees that it will transfer such Warrants only as provided in this Agreement. The Company shall not register a transfer of any Warrants unless such transfer complies with the restrictions on transfer of such Warrants set forth in this Agreement. In connection with any transfer of Warrants, each Holder agrees by its acceptance of Warrants to furnish the Company such evidence that the transferee is the Initial Holder or an Affiliate of the Initial Holder and, if such transfer is not being made pursuant to an effective registration statement under the Securities Act, with such certifications, legal opinions or other information as the Company may reasonably require to confirm that such transfer is being made pursuant to an exemption from, or a transaction not subject to, the registration requirements of the Securities Act and otherwise in compliance with this Agreement.

ARTICLE IX

WARRANT HOLDERS

Section 9.1. Warrant Holder Deemed Not a Stockholder.

The Company may deem and treat the registered Holder(s) of the Warrant Certificates as the absolute owner(s) thereof (notwithstanding any notation of ownership or other writing thereon made by anyone), for the purpose of any exercise thereof and for all other purposes, and the Company shall not be affected by any notice to the contrary. Accordingly, the Company shall not, except as ordered by a court of competent jurisdiction as required by law, be bound to recognize any equitable or other claim to or interest in the Warrants on the part of any person other than such registered Holder, whether or not it shall have express or other notice thereof. Prior to the exercise of the Warrants, no Holder of a Warrant Certificate, as such, shall be entitled to any rights of a stockholder of the Company, including, without limitation, the right to vote or to consent to any action of the stockholders, except as otherwise provided in this Agreement, to receive dividends or other distributions, to exercise any preemptive right or to receive any notice of meetings of stockholders and, except as otherwise provided in this Agreement, shall not be entitled to receive any notice of any proceedings of the Company.

Section 9.2. Right of Action.

All rights of action with respect to this Agreement are vested in the Holders of the Warrants, and any Holder of any Warrant, may, on such Holder's own behalf and for such Holder's own benefit, enforce, and may institute and maintain any suit, action or proceeding against the Company suitable to enforce, or otherwise in respect of, such Holder's right to exercise

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such Warrants in the manner provided in the Warrant Certificate representing such Warrants and in this Agreement.

ARTICLE X

MISCELLANEOUS

Section 10.1. Payment of Taxes.

Subject to Article VI hereof, all shares of Common Stock purchasable upon the exercise of Warrants shall be validly issued, fully paid and not subject to any calls for funds, and the Company shall pay any taxes and other governmental charges that may be imposed under the laws of the United States of America or any political subdivision or taxing authority thereof or therein in respect of the issue or delivery thereof upon exercise of Warrants (other than taxes on or measured by income imposed on any Holder). The Company shall not be required, however, to pay any tax or other charge imposed in connection with any transfer involved in the issue of any certificate for shares of Common Stock (including other securities or property purchasable upon the exercise of the Warrants) or payment of cash to any Person other than the Holder of a Warrant Certificate surrendered upon the exercise of a Warrant and in case of such transfer or payment, the Company shall not be required to issue any share certificate or pay any cash until such tax or charge has been paid or it has been established to the Company's satisfaction that no such tax or charge is due.

Section 10.2. No Merger, Consolidation or Sale of Assets of the Company.

Except as otherwise provided herein, the Company will not merge into or consolidate with any other Person, or sell or otherwise transfer all or substantially all of its property and assets to any Person, unless the entity resulting from such merger or consolidation, or such Person, shall expressly assume the due and punctual performance and observance of each and every covenant and condition of this Agreement or contained in the Warrants to be performed and observed by the Company.

Section 10.3. Notices; Payment.

(a) Any notice, demand or delivery authorized by this Agreement shall be sufficiently given or made when mailed, if sent by first class mail, postage prepaid, addressed to any Holder of a Warrant at such Holder's last known address appearing on the register of the Company and to the Company as follows:

To the Company:

Akorn, Inc.
2500 Millbrook Drive
Buffalo Grove, Illinois 60089
Fax No.: (347) 279-6191
Attention: Jerry Ellis

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or such other address as shall have been furnished to the party giving or making such notice, demand or delivery. Any notice that is mailed in the manner herein provided shall be conclusively presumed to have been duly given when mailed, whether or not the Holder receives the notice.

(b) Payment of the Exercise Price shall be made in accordance with the provisions of this Agreement at the principal executive office of the Company set forth above.

(c) Any notice required to be given by the Company to the Holders shall be made by mailing by registered mail, return receipt requested, to the Holders at their last known addresses appearing on the register maintained by the Company. Any notice that is mailed in the manner herein provided shall be conclusively presumed to have been duly given when mailed, whether or not the Holder receives the notice.

Section 10.4. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the Company and its respective successors and assigns, and the Holders from time to time of the Warrants. Nothing in this Agreement is intended or shall be construed to confer upon any Person, other than the Company and the Holders of the Warrants, any right, remedy or claim under or by reason of this Agreement or any part hereof.

Section 10.5. Counterparts.

This Agreement may be executed manually or by facsimile in any number of counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

Section 10.6. Amendments.

Any provision of this Agreement may be amended or modified in whole or in part at any time by an agreement in writing among the Company and the Holder of the Warrant. No Failure on the part of either the Company or the Holder of the Warrant to exercise, and no delay in exercising, any right shall operate as a waiver thereof nor shall any single or partial exercise by either the Company or the Holder of the Warrant of any right preclude any other or future exercise thereof or the exercise of any other right.

Section 10.7. Headings.

The descriptive headings of the several Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

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Section 10.8. Common Stock Legend.

Unless and until the Common Stock purchasable upon the exercise of the Warrants are registered under the Securities Act, or unless otherwise agreed by the Company and the Holder thereof, such shares of Common Stock will bear a legend to the following effect:

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES.

Section 10.9. Termination.

Unless terminated earlier pursuant to this Agreement, this Agreement shall terminate at 5:00 p.m. (New York City time) on the Expiration Date. Notwithstanding the foregoing, this Agreement shall terminate on any earlier date as of which all Warrants have been exercised.

Section 10.10. Method of Payment.

The U.S. dollar is the sole currency of account and payment for all sums payable by the Company or the Holders under or in connection with the Warrants, including damages.

Section 10.11. Governing Law.

This Agreement shall be governed by the laws of the State of New York. The Company and the Holders agree to submit to the jurisdiction of the courts of the State of New York in any action or proceeding arising out of or

related to this Agreement or the Warrants.

(signature page follows)

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

AKORN, INC.

By: _____
Bernard J. Pothast, Senior Vice
President, Chief Financial Officer,
Secretary and Treasurer

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The John N. Kapoor Trust dtd 9/20/89

By: _____
Name:
Title:

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EXHIBIT A

FORM OF WARRANT CERTIFICATE

THE SECURITIES EVIDENCED HEREBY ARE NOT TRANSFERABLE, EXCEPT IN ACCORDANCE WITH THE WARRANT AGREEMENT.

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES.

AKORN, INC.

[-----]

No. _____

WARRANTS TO PURCHASE COMMON STOCK

This certifies that [_____] or its registered assigns, is the owner of _____ Warrants, each of which represents the right to purchase from Akorn, Inc., a Louisiana corporation (the "Company"), at any time beginning _____, 200_ and prior to the Expiration Date (as defined in the Warrant Agreement referred to below), _____ shares of the common stock, no par value per share, of the Company (the "Common Stock") at a per share exercise price (the "Exercise Price") equal to \$_____ (subject to adjustment as provided in the Warrant Agreement), upon surrender hereof at the Company, with the Subscription Form on the reverse hereof duly executed with simultaneous payment in full by wire transfer of immediately available funds or by certified or official bank or bank cashier's check payable to the order of the Company. At any time on or before the Expiration Date, any outstanding Warrants may be exercised on any Business Day (as defined in the Warrant Agreement); provided that the Holders of Warrants shall be able to exercise their Warrants only if the exercise of such Warrants is exempt from the registration requirements of

the Securities Act of 1933, as amended, as reasonably determined by the Company, and such securities are qualified for sale or exempt from qualification under the applicable securities laws of the states or other jurisdictions in which such Holder resides.

This Warrant Certificate is issued under and in accordance with a Warrant Agreement dated as of October [], 2003 (the "Warrant Agreement"),

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between the Company and [], and is subject to the Articles of Incorporation of the Company and to the terms and provisions contained therein, to all of which terms and provisions the holder of this Warrant Certificate consents by acceptance hereof. The terms of the Warrant Agreement and the Registration Rights Agreement are hereby incorporated herein by reference and made a part hereof. Reference is hereby made to the Warrant Agreement for a full description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Company and the Holders of the Warrants. The summary of the terms of the Warrant Agreement and the Registration Rights Agreement contained in this Warrant Certificate is subject to and qualified in its entirety by express reference to the Warrant Agreement and the Registration Rights Agreement. To the extent permitted by applicable law, in the event of any inconsistency between the terms of this Warrant and the terms of the Warrant Agreement, the terms of the Warrant Agreement shall govern. All terms used in this Warrant Certificate that are defined in the Warrant Agreement and the Registration Rights Agreement shall have the meanings assigned to them in such agreements.

This Warrant Certificate shall be void and all rights evidenced hereby shall cease on the Expiration Date, unless sooner terminated by the liquidation, dissolution or winding-up of the Company or as otherwise provided in the Warrant Agreement upon the consolidation or merger of the Company with, or sale of the Company to, another Person or unless such date is extended as provided in the Warrant Agreement.

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The Warrant Agreement and the Warrants shall be governed by the laws of the State of New York. The Company and the Holders agree to submit to the jurisdiction of the courts of the State of New York in any action or proceeding arising out of or related to this Agreement or the Warrants.

AKORN, INC.

By: _____
Name:
Title:

Dated: _____, 200_

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FORM OF REVERSE OF WARRANT CERTIFICATE

SUBSCRIPTION FORM

(To be executed only upon exercise of Warrant)

To: Akorn, Inc.
2500 Millbrook Drive
Buffalo Grove, Illinois 60089
Telecopier No.: (847) 279-6191

Attention: Jerry Ellis

The undersigned irrevocably exercises _____ of the Warrants

represented by this Warrant Certificate and herewith makes payment of \$ _____
(such payment being in cash or by certified or official bank or bank cashier's
check payable to the order or at the direction of Akorn, Inc. or pursuant to a
Cashless Exercise on the terms and conditions specified in this Warrant
Certificate and in the Warrant Agreement referred to herein) and surrenders this
Warrant Certificate and all right, title and interest therein to and directs
that the common stock, no par value per share, of Akorn, Inc. (the "Common
Stock") deliverable upon the exercise of such Warrants be registered or placed
in the name and at the address specified below and delivered thereto.

Dated: _____

(Signature of Owner)

(Street Address)

(City) (State) (Zip Code)

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FORM OF ASSIGNMENT

The undersigned registered Holder of this Warrant Certificate hereby
sells, assigns, and transfers unto the Assignee(s) named below (including the
undersigned with respect to any Warrants constituting a part of the Warrants
evidenced by this Warrant Certificate not being assigned hereby) all of the
right of the undersigned under this Warrant Certificate, with respect to the
number of Warrants set forth below:

Name(s) of Assignee(s): _____

Address: _____

No. of Warrants: _____

Please insert social security or other identifying number of assignee(s):

and does hereby irrevocably constitute and appoint the Secretary of Akorn, Inc.
the undersigned's attorney to make such transfer on the books of Akorn, Inc.
maintained for the purposes, with full power of substitution in the premises.

In connection with any transfer of Warrants, the undersigned confirms that the
transfer of the Warrants is exempt from registration under the Securities Act of
1933, as amended, and that the Assignee(s) is the Initial Holder or an Affiliate
of the Initial Holder. The undersigned understands that the Company shall not be
obligated to register the Warrants in the name of any Person other than the
Holder hereof unless and until the conditions to any such transfer of
registration set forth herein and in Article VIII of the Warrant Agreement shall
have been satisfied.

Dated: _____

(Signature of Owner)

(Street Address)

(City) (State) (Zip Code)

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WARRANT AGREEMENT

WARRANT AGREEMENT, dated as of October 7, 2003 (this "Agreement"), between Akorn, Inc., a Louisiana corporation (the "Company"), and The John N. Kapoor Trust dtd 9/20/89 (the "Initial Holder").

W I T N E S S E T H:

WHEREAS, La Salle Bank National Association requires the personal guaranty of the Initial Holder (the "Guaranty") in order to provide to the Company credit facilities (the "Credit Facilities") under the credit agreement to be entered into among the Company, Akorn (New Jersey), Inc., La Salle Bank National Association and the financial institutions that are or may from time to time become parties thereto (as may be amended, the "Credit Agreement"), and the Company desires to have the Initial Holder enter into that Guaranty;

WHEREAS, in consideration for having the Initial Holder enter into the Guaranty, the Company desires to grant to the Initial Holder warrants to purchase shares of Common Stock (as defined below);

WHEREAS, this Agreement governs the issuance of the Warrant Certificates (as defined below) and the other matters as provided herein, including, without limitation, for the purpose of defining the terms and provisions of the Warrants (as defined below) and the respective rights and obligations thereunder of the Company and the Initial Holder together with any subsequent record holders thereof (together with the holders of shares of Common Stock (or other securities) received upon exercise thereof, the "Holders").

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements contained herein, the Company and the Initial Holder hereby agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

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

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"Additional Shares" has the meaning specified in Section 4.1(a)(ii) hereof.

"Affiliate" of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Available Shares" means the 12,883,000 shares of Common Stock the Company currently has duly authorized and available to be reserved for issuance upon exercise of the Warrants.

"Board" means the board of directors of the Company from time to time.

"Business Day" means a day except a Saturday, Sunday or other day on which commercial banks in The City of New York, are authorized by law to close.

"Cashless Exercise" has the meaning specified in Section 3.3 hereof.

"Cashless Exercise Ratio" has the meaning specified in Section 3.3 hereof.

"Closing Date" means the date hereof.

"Common Stock" means the common stock, no par value per share, of the Company, and any other capital stock of the Company into which such Common Stock may be converted or reclassified or that may be issued in respect of, in exchange for, or in substitution of, such Common Stock by reason of any stock splits, stock dividends, distributions, mergers, consolidations or other like events.

"Convertible Securities" means any options or warrants to purchase or rights to subscribe for shares of Common Stock, securities by their terms convertible into or exchangeable for shares of Common Stock, or options or warrants to purchase or rights to subscribe for such convertible or exchangeable securities.

"Credit Agreement" has the meaning specified in the recitals to this Agreement.

"Credit Facilities" has the meaning specified in the recitals to this Agreement.

"Current Market Value" has the meaning specified in Section 3.3 hereof.

"Exchange Act" means the United States Securities Exchange Act of 1934, as amended.

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"Excluded Issuances" means the issuance or reissuance of any shares of Common Stock or Convertible Securities (whether treasury shares or newly issued shares) pursuant to or in connection with (1) a dividend or distribution on, or subdivision, combination, consolidation or reclassification of, the outstanding Common Stock requiring an adjustment in the Exercise Price pursuant to Section 4(a) (i), (2) any Convertible Security outstanding as of the Closing Date, including, without limitation, the Note Warrants and the Preferred Stock Warrants (except as otherwise provided in Section 4.1(a) (iv) (5) (D)), (3) the exercise of Warrants, (4) the grant or exercise of any stock or stock options to employees, directors or consultants of the Company that may be granted to or exercised by any employee, director or consultant under any stock option or similar benefit plan of the Company now existing or to be implemented in the future, (5) any transaction involving the Company's issuance of securities in connection with an acquisition (the primary purpose of which is not to raise equity capital), (6) any transaction involving the Company's issuance of securities in connection with any strategic partnership or joint venture (the primary purpose of which is not to raise equity capital), (7) any issuance of securities by the Company as consideration for the acquisition of a license by the Company, or (8) the issuance of securities pursuant to any financing from a bank or similar financial or lending institution approved by the Board; provided, however, that issuances of securities described in the forgoing sub-clauses (4), (6), (7) and (8) subsequent to the Closing Date which exceed, in the aggregate, 10% of the outstanding Common Stock of the Corporation outstanding as of the Closing Date (as adjusted for any split, subdivision, combination, consolidation, recapitalization or similar event with respect to the Common Stock), as determined on a fully-diluted basis, shall not be deemed to be Excluded Issuances.

"Exercise Date" means the date upon which a Holder exercises a Warrant or Warrants in accordance with Section 3.2.

"Exercise Price" has the meaning specified in Section 3.1 hereof.

"Expiration Date" means for each Warrant, the third anniversary of the Issue Date of such Warrant.

"Fair Market Value" with respect to any securities, assets or property means the fair value thereof as determined by an independent investment banking or appraisal firm experienced in the valuation of such securities or property; provided that the value of any securities that trade on a national securities exchange or inter-dealer quotation system shall be the Current Market Value thereof as of the date such value is determined.

"Guaranty" has the meaning specified in the recitals to this Agreement.

"Holders" has the meaning specified in the recitals to this Agreement.

"Issue Date" shall mean with respect to each Warrant, the date of issuance of such Warrant.

"Laws" shall include all foreign, federal, state and local laws, statutes, ordinances, rules, regulations, orders, judgments, decrees and bodies of law.

"Note Warrants" has the meaning ascribed thereto in the Purchase Agreement.

"Parent" means any Person of which the Company is a direct or indirect subsidiary.

"Person" means an individual, corporation, partnership, limited liability company, joint venture association, joint-stock company trust, unincorporated organization, government or agency thereof.

"Preferred Stock Warrants" has the meaning ascribed thereto in the Purchase Agreement.

"Private Placement Legend" means the legend set forth on the Warrant Certificates in the form set forth in Section 2.3.

"Purchase Agreement" shall mean the Preferred Stock and Note Purchase Agreement, dated as of September 25, 2003, by and among the Company and the purchasers listed on the signature pages thereto.

"Proxy Statement" means the proxy statement distributed to the Company's stockholders in connection with the Stockholder's Meeting.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the United States Securities Act of 1933, as amended.

"Stockholder Approval" shall have the meaning ascribed thereto in the Purchase Agreement.

"Subscription Form" means the form on the reverse side of the Warrant Certificate substantially in the form of Exhibit A hereto.

"Subsidiaries" or "Subsidiary" shall mean the collective reference to all direct or indirect subsidiaries of the Company.

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

"Termination Date" means the date on which the Credit Agreement is no longer in effect.

"Transaction" has the meaning specified in Section 4.1(b)(i) hereof.

"Warrants" has the meaning specified in Section 2.1(a) hereof.

"Warrant Certificates" has the meaning specified in Section 2.2 hereof.

ARTICLE II

ISSUE OF WARRANTS

Section 2.1. Issuance of Warrants.

(a) The Company hereby agrees to issue to the Initial Holder on the Closing Date warrants (the "Warrants") to purchase from the Company 880,000 shares of Common Stock with an exercise price equal to the Exercise Price.

(b) The Company hereby agrees that on each anniversary of the Closing Date prior to the Termination Date, it will issue to the Initial Holder, Warrants on the terms set forth herein to purchase from the Company the number of shares of Common Stock equal to the product obtained by multiplying (x) 0.08 by (y) the portion of the Credit Facilities guaranteed by the Initial Holder.

Section 2.2. Form of Warrant Certificates.

Certificates representing the Warrants (the "Warrant Certificates") shall be in the form attached hereto as Exhibit A, shall be dated the Issue Date and shall have such insertions as are appropriate or required or permitted by this Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements stamped, printed, lithographed or engraved thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any Laws or to conform to custom or usage.

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Section 2.3. Restrictive Legends.

The Warrant Certificates shall bear the following legend on the face thereof:

THE SECURITIES EVIDENCED HEREBY ARE NOT TRANSFERABLE, EXCEPT IN ACCORDANCE WITH THE WARRANT AGREEMENT.

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES.

ARTICLE III

EXERCISE PRICE, EXERCISE, REPURCHASE OF WARRANTS AND REGISTRATION RIGHTS

Section 3.1. Exercise Price.

Each Warrant Certificate shall initially entitle the Holder thereof, subject to the provisions of this Agreement, to purchase the number of shares of Common Stock indicated thereon at a per share purchase price (the "Exercise Price") equal to \$1.10, subject to adjustment as provided in Section 4.1 and Article V hereof.

Section 3.2. Exercise; Restrictions on Exercise.

At any time after the Issue Date and prior to 5:00 p.m. (New York City time) on the Expiration Date, any outstanding Warrants may be exercised on any Business Day; provided that Holders of Warrants will be able to exercise their Warrants only if the exercise of such Warrants is exempt from the registration requirements of the Securities Act, as reasonably determined by the Company, and such securities are qualified for sale or exempt from qualification under the applicable securities laws of the states or other jurisdictions in which such Holders reside. Any Warrants not exercised by 5:00 p.m., New York City time, on the Expiration Date shall expire and all rights of the Holders of

such Warrants shall terminate. Additionally, pursuant to Section 4.1(b)(ii) hereof, the Warrants shall expire and all rights of the Holders of such Warrants shall terminate in the event the Company merges or consolidates with or sells all or substantially all of its property and assets to a Person (other than an Affiliate of the Company) if the consideration payable to holders of Common Stock in exchange for their Common Stock in connection with such merger,

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consolidation or sale consists solely of cash or in the event of the dissolution, liquidation or winding up of the Company.

Section 3.3. Method of Exercise; Payment of Exercise Price.

In order to exercise all or any of the Warrants represented by a Warrant Certificate, the Holder thereof must surrender for exercise the Warrant Certificate to the Company at its principal executive office, with the Subscription Form set forth on the reverse of the Warrant Certificate duly executed, together with payment in full of the Exercise Price then in effect for each share of Common Stock (or other securities) purchasable upon exercise of the Warrants as to which a Warrant is exercised; such payment may be made (i) in cash or by certified or official bank check payable to the order of the Company or by wire transfer of immediately available funds to an account designated by the Company for such purpose, (ii) without the payment of cash (a "Cashless Exercise"), by reducing the number of shares of Common Stock that would be obtainable upon the exercise of a Warrant and payment of the Exercise Price in cash so as to yield a number of shares of Common Stock upon the exercise of such Warrant equal to the product of (a) the number of shares of Common Stock for which such Warrant is exercisable as of the date of exercise (if the Exercise Price were being paid in cash) and (b) the Cashless Exercise Ratio, or (iii) a combination of (i) and (ii).

The "Cashless Exercise Ratio" shall equal a fraction, the numerator of which is the excess of the Current Market Value per share of Common Stock on the Exercise Date over the Exercise Price per share as of the Exercise Date and the denominator of which is the Current Market Value per share of the Common Stock on the Exercise Date. Upon surrender of a Warrant Certificate representing more than one Warrant in connection with the Holder's option to elect a Cashless Exercise, the number of shares of Common Stock deliverable upon a Cashless Exercise shall be equal to the number of shares of Common Stock issuable upon the exercise of Warrants that the Holder specifies are to be exercised pursuant to a Cashless Exercise multiplied by the Cashless Exercise Ratio. All provisions of this Agreement shall be applicable with respect to a surrender of a Warrant Certificate pursuant to a Cashless Exercise for less than the full number of Warrants represented thereby.

The "Current Market Value" per share of Common Stock on any date shall be the closing sale price on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Common Stock or such other securities are listed or admitted to trading or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the last quoted sale price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or such other system then in use, or, if on any such date the Common Stock or such other securities are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker, selected by the Board and reasonably

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acceptable to the Holder, making a market in the Common Stock or such other securities of the Company.

If less than all the Warrants represented by a Warrant Certificate are exercised, such Warrant Certificate shall be surrendered and a new Warrant Certificate of the same tenor and for the number of Warrants which were not exercised shall be executed by the Company and delivered to the Holder.

Upon the exercise of any Warrants following the surrender of a Warrant Certificate in conformity with the foregoing provisions, the Company shall transfer promptly to the Holder appropriate evidence of ownership of any shares of Common Stock or other securities or property to which the Holder is entitled as a result of exercise, at the Company's option, an amount in cash, in lieu of any fractional shares, as provided in Section 4.3 hereof.

Upon the exercise of a Warrant or Warrants, the Company shall as promptly as practicable but not later than 14 Business Days after such exercise enter, or cause any transfer agent of the shares of Common Stock to enter, the name of the person entitled to receive the shares of Common Stock upon exercise of such Warrants into the Company's register of stockholders. Thereupon, the Company or the applicable transfer agent shall issue certificates for the necessary number of shares of Common Stock to which said Holder is entitled.

A Warrant shall be deemed by the Company to be exercised immediately prior to the close of business on the date of surrender for exercise, as provided above, of the Warrant Certificate representing such Warrant and, for all purposes under this Agreement, the Holder shall receive the shares of Common Stock the Holder would have been entitled to had it been the registered Holder on such date, except that for purposes of transferring the shares of Common Stock or voting in a general stockholders' meeting, the Holder shall, in its relation with the Company, be deemed to be the Holder thereof only when such shares of Common Stock are entered in the register of stockholders in the name of such person; provided, however, that, with respect to Warrants which have been exercised but for which the corresponding shares of Common Stock have not been recorded in the register of stockholders, the provisions of Article IV shall continue to apply as if the number of Warrants held prior to exercise remained outstanding on the date of any action or event of the type giving rise to an adjustment under Article IV.

Section 3.4. Registration Rights.

The shares of Common Stock issuable upon exercise of the Warrants shall have the registration rights as set forth in the Registration Rights Agreement, dated as of October 7, 2003, by and among the Company and the parties listed on the signature pages thereto.

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ARTICLE IV

ADJUSTMENTS

Section 4.1. Adjustments.

The Exercise Price and the number of shares of Common Stock (or other securities) purchasable upon exercise of each Warrant shall be subject to adjustment from time to time as follows (subject in each case to Section 4.1(a) (vi) hereof):

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

(i) Stock Dividends, Splits, etc. In case the Company shall at any time or from time to time after the Closing Date (A) declare a dividend or make a distribution on the outstanding shares of Common Stock or securities convertible into Common Stock, in either case, in shares of Common Stock or (B) effect a subdivision, combination, consolidation or reclassification of the outstanding shares of Common Stock into a greater or lesser number of shares of Common Stock, then, and in each such case, the Exercise Price in effect immediately prior to such event or the record date therefor, whichever is earlier, shall be adjusted by multiplying such Exercise Price by a fraction of which (x) the numerator is the number of shares of Common Stock that were outstanding immediately prior to such event and (y) the denominator is the number of shares of Common Stock outstanding immediately after such event. An adjustment made pursuant to this Section 4(a)(i) shall become effective (x) in the case of any such dividend or distribution, immediately after the close of business on

the date for the determination of holders of shares of Common Stock entitled to receive such dividend or distribution, or (y) in the case of any such subdivision, combination, consolidation or reclassification, at the close of business on the day upon which such corporate action becomes effective.

(ii) Below Market or Conversion Price Issuances. In case the Company shall at any time or from time to time after the Closing Date issue or sell any Common Stock or Convertible Security (collectively, "Additional Shares") without consideration or for a consideration per share (or having a conversion, exchange or exercise price per share) less than the greater of (A) the Current Market Value per share of Common Stock on the Business Day immediately preceding the earlier of the issuance, or public announcement of the issuance, of such Additional Shares and (B) the Exercise Price as of the date of such issuance then, and in each such case, the Exercise Price shall be reduced to an amount determined by multiplying the Exercise Price in effect on the day immediately prior to such date by a fraction of which (x) the numerator is the sum of (i) the product of (A) the number of shares of Common Stock outstanding immediately prior to such sale or issuance multiplied by (B) the greater of (1) the then applicable Exercise Price per share and (2) the Current Market Value per share of Common Stock on the date preceding the earlier of the issuance or public announcement of the issuance of such Additional Shares (the greater of (1) and (2) above hereinafter referred to as the "Adjustment Price") and (ii) the aggregate consideration receivable by the Company

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for the total number of shares of Common Stock so issued (or into or for which the Convertible Securities are convertible, exercisable or exchangeable), and (y) the denominator equals the product of (i) the sum of (A) the total number of shares of Common Stock outstanding immediately prior to such sale or issue and (B) the number of additional shares of Common Stock issued (or into or for which the Convertible Securities may be converted, exercised or exchanged), multiplied by (ii) the Adjustment Price. An adjustment made pursuant to this subsection (ii) shall be made on the next Business Day following the date on which any such issuance is made and shall be effective retroactively to the close of business on the date of such issuance. Notwithstanding the foregoing, no adjustment (other than as provided for in Section 4(a)(iv)(5)(D)) shall be made pursuant to this Section 4(a)(ii) in connection with any Excluded Issuances.

(iii) Special Dividends; Repurchases. In case the Company after the Closing Date shall (1) distribute to all holders of shares of Common Stock evidences of its indebtedness, assets (excluding any regular periodic cash dividend but including any extraordinary cash dividend), capital stock (other than Common Stock) or rights to subscribe for capital stock (other than Common Stock), or (2) purchase or otherwise acquire for value any shares of Common Stock in an Above Market Repurchase, in each such case the Exercise Price in effect immediately prior to the date of such distribution (or the date immediately prior to the date of the public announcement of such distribution, whichever is earlier) or date of such purchase (or the date immediately prior to the date of the public announcement of such purchase), as applicable, shall be adjusted by multiplying such Exercise Price by a fraction of which (x) the numerator is the remainder (if greater than zero) of (i) the Current Market Value per share of Common Stock on such date, minus (ii) the Fair Market Value as of such date of the portion of assets, evidences of indebtedness, capital stock or subscription rights so distributed or paid applicable to one share of Common Stock, and (y) the denominator is the Current Market Value per share of Common Stock on such date, such adjustment to become effective immediately prior to the opening of business on the day following the date of distribution or purchase; provided, however, that no adjustment shall be made pursuant to clause (1) of this subparagraph (a)(iii) (A) if such issuance is an Excluded Issuance or (B) if an adjustment shall otherwise be made with respect to such distribution or issuance pursuant to Section 4.1(a)(ii); and further provided, however, that if in any case the numerator of such fraction shall be zero or less than zero, no adjustment shall be made in such case. The Company shall provide any Holder, upon receipt of a written

request therefor, with any indenture or other instrument defining the rights of the holders of any indebtedness, assets, subscription rights or capital stock referred to in this subparagraph (a)(iii).

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(iv) General. For the purposes of any adjustment of the Exercise Price pursuant to paragraph (ii) of this Section 4.1(a), the following provisions shall be applicable:

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

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

(3) Subparagraph (2) above notwithstanding, in the case of the issuance of Additional Shares to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving corporation, the amount of consideration therefore shall be deemed to be the Fair Market Value of such portion of the net assets and business of the non-surviving entity as is attributable to such Common Stock or Convertible Securities, as the case may be.

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

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

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

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(B) With respect to any Convertible Securities issued after the Closing Date for which an adjustment to the Exercise Price previously has been made pursuant to Section 4.1(a)(ii), on any increase in the number of shares of Common Stock deliverable upon exercise, conversion or exchange of, or a decrease in the exercise price of, such Convertible Securities other than a change resulting from the anti-dilution provisions thereof, the applicable Exercise Price shall forthwith be readjusted retroactively to give effect to such increase or decrease;

(C) With respect to any Convertible Securities issued after the Closing Date for which an adjustment to the Exercise Price has previously not been made pursuant to Section 4.1(a)(ii), if there is any increase in the number of shares of Common Stock deliverable upon

exercise, conversion or exchange of, or a decrease in the exercise price of, such Convertible Securities other than a change resulting from the anti-dilution provisions thereof, such Convertible Securities shall be treated as if they had been cancelled and reissued and an adjustment to the Exercise Price with respect to such deemed issuance shall be made pursuant to Section 4.1(a)(ii), if applicable;

(D) With respect to any Convertible Securities issued prior to the Closing Date, if there is any increase in the number of shares of Common Stock deliverable upon exercise, conversion or exchange of, or a decrease in the exercise price of, such Convertible Securities other than a change resulting from the anti-dilution provisions thereof, such Convertible Securities shall be treated as if they had been cancelled and reissued and an adjustment to the Exercise Price with respect to such deemed issuance shall be made pursuant to Section 4.1(a)(ii), if applicable; and

(E) No further adjustment of the Exercise Price adjusted upon the issuance of any such Convertible Securities shall be made as a result of the actual issuance of Common Stock upon the exercise, conversion or exchange of any such Convertible Securities.

(v) Rights Distributions. Rights or warrants issued by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase capital stock of the Company, which rights or warrants (1) are deemed to be transferred with such shares of Common Stock, (2) are not exercisable and (3) are also issued in respect of future issuances of Common Stock, including shares of

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Common Stock issued upon exercise of the warrants, in each case in clauses (1) through (3) until the occurrence of a specified event, shall for purposes of subparagraphs (b)(ii) and (b)(iii) not be deemed issued until the occurrence of the earliest such specified event.

(vi) Calculations. All calculations of the Exercise Price shall be made to the nearest five decimal places. Anything in Section 4.1(a) to the contrary notwithstanding, in no event shall the then current Exercise Price be increased as a result of any calculation made at any time pursuant to Sections 4.1(a)(ii) through 4.1(a)(iv). No adjustment to the Exercise Price pursuant to paragraph 4.1(a) shall be required unless such adjustment would require an increase or decrease of at least 1% in the Exercise Price; provided, however, that any adjustments which by reason of this paragraph 4.1(a)(vi) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. Notwithstanding any other provision of this Section 4.1(a), no adjustment to the Exercise Price shall reduce the Exercise Price below \$0.01, and any such purported adjustment shall instead reduce the Exercise Price to \$0.01.

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

(viii) Successive Adjustments. Successive adjustments in the Exercise Price shall be made, without duplication, whenever any event specified in Sections 4.1(a)(i) through 4.1(a)(iii) shall occur.

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

(i) In case of any capital reorganization or reclassification of outstanding shares of Common Stock (other than a reclassification covered by Section 4.1(a)), or in case of any

consolidation or merger of the Company with or into another Person, or in case of any sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation) of all or substantially all of the Company's assets, on a consolidated basis, in one transaction or a series of related transactions, to any Person (including any group that is deemed to be a Person) (each of the foregoing being referred to as a "Transaction"), in each case which is effected in such a manner that the holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock or other securities or property (including cash) with respect to or in

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exchange for Common Stock, Warrants then outstanding shall thereafter be convertible into, in lieu of the Common Stock issuable upon such conversion prior to the consummation of such Transaction, the kind and amount of shares of stock and other securities and property (including cash) receivable upon the consummation of such Transaction by a holder of that number of shares of Common Stock into which such Holder's Warrants were exercisable (without regard to any limitation on exercise contained herein, the availability of authorized and unissued shares for issuance upon exercise, or otherwise) immediately prior to the consummation of such Transaction. In any such case, the Company or the Person formed by the consolidation or resulting from the merger or which acquires such assets or which acquires the Company's shares, as the case may be, shall make or cause to be made appropriate provisions (as determined in good faith by the Board) in the applicable agreement of merger or consideration, its certificate or articles of incorporation or other constituent documents to ensure that the provisions of this Agreement will continue to be applicable to the Warrants or any such other shares of stock and other securities (other than Common Stock) and property deliverable upon exercise of the Warrants remaining outstanding following the Transaction. In case securities or property other than Common Stock shall be issuable or deliverable upon conversion as aforesaid, then all references in this Section 4.1 shall be deemed to apply, so far as appropriate and as nearly as may be, to such other securities or property. The provisions of this Section 4.1(b) shall similarly apply to successive Transactions. The Company shall give written notice to the Holders at least 30 days prior to the date on which any Transaction or similar transaction affecting the Company shall take place.

(ii) Notwithstanding the foregoing, (x) if the Company merges or consolidates with, or sells all or substantially all of its property and assets to, another Person and consideration is payable to holders of Common Stock in exchange for their shares of Common Stock in connection with such merger, consolidation or sale which consists solely of cash, or (y) in the event of the dissolution, liquidation or winding up of the Company, then the Holders of Warrants shall be entitled to receive payments or distributions as of the date of such event on an equal basis with, and on the same day as, holders of shares of Common Stock (or other securities purchasable upon exercise of the Warrants) as if the Warrants had been exercised immediately prior to such event, less an amount equal to the Exercise Price. Upon receipt of such payment, if any, the rights of a Holder shall terminate and cease and such Holder's Warrants shall expire. In case of any such merger, consolidation or sale of assets, the surviving or acquiring Person or, in the event of any dissolution, liquidation or winding up of the Company, after receipt of surrendered Warrant Certificates from the Holder, the Company shall make payment by delivering a check in such amount as is appropriate (or, in the case of

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consideration other than cash, such other consideration as is appropriate) to the Holder.

(iii) Notwithstanding anything contained herein to the contrary, the Company will not effect any Transaction unless, prior to the consummation thereof, the Surviving Person, if other than the Company, shall mail, by first-class mail, postage prepaid, to each

Holder at such Holder's address as it appears on the transfer books of the Company, (A) a written instrument assuming the obligation to deliver to such Holder such cash, property and securities to which, in accordance with the foregoing provisions, such Holder is entitled, and (B) an opinion of outside counsel for such Surviving Person stating that such assumption agreement is a valid, binding and enforceable agreement of the Surviving Person.

(iv) Nothing contained in this Section 4.1(b) shall limit the rights of the Holders to exercise the Warrants.

Section 4.2. Notice of Consolidation, Merger, Etc.

In case at any time after the date hereof and prior to 5:00 p.m., New York City time, on the Expiration Date, there shall be any (i) consolidation or merger involving the Company or sale, transfer or other disposition of all or substantially all of the Company's property, assets or business (except a merger or other reorganization in which the Company shall be the surviving corporation and holders of Common Stock receive no consideration in respect of their shares) or (ii) any other transaction contemplated by Section 4.1(b)(i) above, then, in any one or more of such cases, the Company shall mail, at the Company's expense, to the Holders, at the earliest practicable time (and, in any event, not less than 20 days before any date set for definitive action), notice of the date on which such reorganization, sale, consolidation, merger, dissolution, liquidation or winding up shall take place, as the case may be. Such notice shall also set forth such facts as shall indicate the effect of such action (to the extent such effect may be known at the date of such notice) on the Exercise Price and the kind and amount of the shares of Common Stock and other securities, money and other property deliverable upon exercise of the Warrants. Such notice shall also specify the date as of which the holders of record of the shares of Common Stock or other securities or property purchasable upon exercise of the Warrants shall be entitled to exchange their shares for securities, money or other property deliverable upon such reorganization, sale, consolidation, merger, dissolution, liquidation or winding up, as the case may be.

Section 4.3. Fractional Interests.

In connection with the exercise of any Warrant pursuant to Section 4.1, no fractions of shares of Common Stock shall be issued, but in lieu thereof the Company shall pay a cash adjustment in respect of such fractional interest in an amount equal to such fractional interest multiplied by the Current Market Value per share of Common Stock on the day on which such Warrants are deemed to have been exercised. If more than one Warrant shall be surrendered

for exercise at one time by the same Holder, the number of full shares of Common Stock issuable upon exercise thereof shall be computed on the basis of the total number of Warrants so surrendered.

Section 4.4. When Issuance or Payment May Be Deferred.

In any case in which this Article IV shall require that an adjustment in the Exercise Price be made effective as of a record date for a specified event, the Company may elect to defer until the occurrence of such event (i) issuing to the Holder of any Warrant exercised after such record date the shares of Common Stock and other shares in the capital of the Company, if any, purchasable upon such exercise over and above the shares of Common Stock and other shares in the capital of the Company, if any, purchasable upon such exercise and (ii) paying such Holder any amount in cash in lieu of a fractional share; provided, however, that the Company shall deliver to such Holder a due bill or other appropriate instrument evidencing such Holder's right to receive such additional shares of Common Stock, other shares and cash upon the occurrence of the event requiring such adjustment.

Section 4.5. Par Value; Valid Issuance.

The Company will not increase the par value of the shares of

Common Stock above the Exercise Price (as adjusted hereunder from time to time), except to the extent required by applicable law. The Company will take all such corporate action, to the extent permitted by applicable law (including, without limitation, reducing the par value thereof), as may be necessary or appropriate in order that the Company may validly and legally issue stock upon the exercise of Warrants.

ARTICLE V

DECREASE IN EXERCISE PRICE

The Board, in its sole discretion, shall have the right at any time, or from time to time, to decrease the Exercise Price of the Warrants and/or increase the number of shares issuable upon the exercise of the Warrants.

ARTICLE VI

LOSS OR MUTILATION

Upon receipt by the Company of evidence satisfactory to it of the ownership and the loss, theft, destruction or mutilation of any Warrant Certificate and of indemnity or bond satisfactory to it and (in the case of mutilation) upon surrender and cancellation thereof, then, in the absence of notice to the Company that the Warrants represented thereby have been acquired by a bona fide purchaser, the Company shall execute and deliver to the registered Holder of the lost, stolen, destroyed or mutilated Warrant Certificate, in exchange for or in lieu thereof, a new Warrant Certificate of the same tenor and for a like aggregate number of Warrants. Upon the issuance of

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any new Warrant Certificate under this Article VI, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and other expenses in connection therewith. Every new Warrant Certificate executed and delivered pursuant to this Article VI in lieu of any lost, stolen or destroyed Warrant Certificate shall constitute a contractual obligation of the Company whether or not the allegedly lost, stolen or destroyed Warrant Certificates shall be at any time enforceable by anyone and shall be entitled to the benefits of this Agreement equally and proportionately with any and all other Warrant Certificates duly executed and delivered hereunder. The provisions of this Article VI are exclusive and shall preclude (to the extent lawful) all other rights or remedies with respect to the replacement of mutilated, lost, stolen, or destroyed Warrant Certificates.

ARTICLE VII

COVENANTS

Section 7.1. Covenants.

The Company agrees that (a) prior to the date of the Stockholder Approval, (i) it will at all times reserve and keep available, free from liens, charges and security interests and not subject to any preemptive rights, solely for issuance and delivery upon exercise of the Warrants, the Available Shares and (ii) the Available Shares shall be duly authorized and, when issued upon such exercise, shall be validly issued, fully paid and nonassessable, and (b) from and after the date of the Stockholder Approval (i) it will at all times reserve and keep available, free from liens, charges and security interests and not subject to any preemptive rights, solely for issuance and delivery upon exercise of the Warrants, the number of shares of Common Stock from time to time issuable upon exercise of the Warrants at the time outstanding and (ii) all shares of Common Stock issuable upon exercise of the Warrants shall be duly authorized and, when issued upon such exercise, shall be validly issued, fully paid and nonassessable.

ARTICLE VIII

WARRANT TRANSFER BOOKS; RESTRICTIONS ON TRANSFER

Section 8.1. Transfer and Exchange.

The Warrant Certificates shall be issued in registered form only. The Warrants shall not be transferable, except as provided in the next paragraph. The Company shall keep at its office a register for the registration of Warrant Certificates and transfers or exchanges of Warrant Certificates as herein provided.

A Holder may transfer its Warrants only to the Initial Holder and Affiliates of the Initial Holder and only by written application to the Company stating the name of the proposed transferee and otherwise complying with the terms of this Agreement. No such transfer shall be effected until, and such

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transferee shall succeed to the rights of a Holder only upon, final acceptance and registration of the transfer by the Company in the register. Prior to the registration of any transfer of Warrants by a Holder as provided herein, the Company and any agent of the Company may treat the person in whose name the Warrants are registered as the owner thereof for all purposes and as the person entitled to exercise the rights represented thereby, any notice to the contrary notwithstanding. When Warrant Certificates are presented to the Company with a request to register the transfer or to exchange them for an equal amount of Warrants of other authorized denominations, the Company shall register such transfer or make such exchange as requested if its requirements for such transactions are met.

Section 8.2. Special Transfer Provisions.

By its acceptance of any Warrants represented by a Warrant Certificate, each Holder of such Warrants acknowledges the restrictions on transfer of such Warrants set forth in this Agreement and in the Private Placement Legend and agrees that it will transfer such Warrants only as provided in this Agreement. The Company shall not register a transfer of any Warrants unless such transfer complies with the restrictions on transfer of such Warrants set forth in this Agreement. In connection with any transfer of Warrants, each Holder agrees by its acceptance of Warrants to furnish the Company such evidence that the transferee is the Initial Holder or an Affiliate of the Initial Holder and, if such transfer is not being made pursuant to an effective registration statement under the Securities Act, with such certifications, legal opinions or other information as the Company may reasonably require to confirm that such transfer is being made pursuant to an exemption from, or a transaction not subject to, the registration requirements of the Securities Act and otherwise in compliance with this Agreement.

ARTICLE IX

WARRANT HOLDERS

Section 9.1. Warrant Holder Deemed Not a Stockholder.

The Company may deem and treat the registered Holder(s) of the Warrant Certificates as the absolute owner(s) thereof (notwithstanding any notation of ownership or other writing thereon made by anyone), for the purpose of any exercise thereof and for all other purposes, and the Company shall not be affected by any notice to the contrary. Accordingly, the Company shall not, except as ordered by a court of competent jurisdiction as required by law, be bound to recognize any equitable or other claim to or interest in the Warrants on the part of any person other than such registered Holder, whether or not it shall have express or other notice thereof. Prior to the exercise of the Warrants, no Holder of a Warrant Certificate, as such, shall be entitled to any rights of a stockholder of the Company, including, without limitation, the right to vote or to consent to any action of the stockholders, except as otherwise provided in this Agreement, to receive dividends or other distributions, to exercise any preemptive right or to receive any notice of meetings of

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stockholders and, except as otherwise provided in this Agreement, shall not be entitled to receive any notice of any proceedings of the Company.

Section 9.2. Right of Action.

All rights of action with respect to this Agreement are vested in the Holders of the Warrants, and any Holder of any Warrant, may, on such Holder's own behalf and for such Holder's own benefit, enforce, and may institute and maintain any suit, action or proceeding against the Company suitable to enforce, or otherwise in respect of, such Holder's right to exercise such Warrants in the manner provided in the Warrant Certificate representing such Warrants and in this Agreement.

ARTICLE X

MISCELLANEOUS

Section 10.1. Payment of Taxes.

Subject to Article VI hereof, all shares of Common Stock purchasable upon the exercise of Warrants shall be validly issued, fully paid and not subject to any calls for funds, and the Company shall pay any taxes and other governmental charges that may be imposed under the laws of the United States of America or any political subdivision or taxing authority thereof or therein in respect of the issue or delivery thereof upon exercise of Warrants (other than taxes on or measured by income imposed on any Holder). The Company shall not be required, however, to pay any tax or other charge imposed in connection with any transfer involved in the issue of any certificate for shares of Common Stock (including other securities or property purchasable upon the exercise of the Warrants) or payment of cash to any Person other than the Holder of a Warrant Certificate surrendered upon the exercise of a Warrant and in case of such transfer or payment, the Company shall not be required to issue any share certificate or pay any cash until such tax or charge has been paid or it has been established to the Company's satisfaction that no such tax or charge is due.

Section 10.2. No Merger, Consolidation or Sale of Assets of the Company.

Except as otherwise provided herein, the Company will not merge into or consolidate with any other Person, or sell or otherwise transfer all or substantially all of its property and assets to any Person, unless the entity resulting from such merger or consolidation, or such Person, shall expressly assume the due and punctual performance and observance of each and every covenant and condition of this Agreement or contained in the Warrants to be performed and observed by the Company.

Section 10.3. Notices; Payment.

(a) Any notice, demand or delivery authorized by this Agreement shall be sufficiently given or made when mailed, if sent by first class mail, postage prepaid, addressed to any Holder of a Warrant at such

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Holder's last known address appearing on the register of the Company and to the Company as follows:

To the Company:

Akorn, Inc.
2500 Millbrook Drive
Buffalo Grove, Illinois 60089
Fax No.: (347) 279-6191
Attention: Jerry Ellis

or such other address as shall have been furnished to the party giving or making such notice, demand or delivery. Any notice that is mailed in the manner herein provided shall be conclusively presumed to have been duly given when mailed, whether or not the Holder receives the notice.

(b) Payment of the Exercise Price shall be made in accordance with the provisions of this Agreement at the principal executive office of the

Company set forth above.

(c) Any notice required to be given by the Company to the Holders shall be made by mailing by registered mail, return receipt requested, to the Holders at their last known addresses appearing on the register maintained by the Company. Any notice that is mailed in the manner herein provided shall be conclusively presumed to have been duly given when mailed, whether or not the Holder receives the notice.

Section 10.4. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the Company and its respective successors and assigns, and the Holders from time to time of the Warrants. Nothing in this Agreement is intended or shall be construed to confer upon any Person, other than the Company and the Holders of the Warrants, any right, remedy or claim under or by reason of this Agreement or any part hereof.

Section 10.5. Counterparts.

This Agreement may be executed manually or by facsimile in any number of counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument.

Section 10.6. Amendments.

Any provision of this Agreement may be amended or modified in whole or in part at any time by an agreement in writing among the Company and the Holder of the Warrant. No Failure on the part of either the Company or the Holder of the Warrant to exercise, and no delay in exercising, any right shall operate as a waiver thereof nor shall any single or partial exercise by either the Company or the Holder of the Warrant of any right preclude any other or future exercise thereof or the exercise of any other right.

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Section 10.7. Headings.

The descriptive headings of the several Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 10.8. Common Stock Legend.

Unless and until the Common Stock purchasable upon the exercise of the Warrants are registered under the Securities Act, or unless otherwise agreed by the Company and the Holder thereof, such shares of Common Stock will bear a legend to the following effect:

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES.

Section 10.9. Termination.

Unless terminated earlier pursuant to this Agreement, this Agreement shall terminate at 5:00 p.m. (New York City time) on the Expiration Date. Notwithstanding the foregoing, this Agreement shall terminate on any earlier date as of which all Warrants have been exercised.

Section 10.10. Method of Payment.

The U.S. dollar is the sole currency of account and payment

for all sums payable by the Company or the Holders under or in connection with the Warrants, including damages.

Section 10.11. Governing Law.

This Agreement shall be governed by the laws of the State of New York. The Company and the Holders agree to submit to the jurisdiction of the courts of the State of New York in any action or proceeding arising out of or related to this Agreement or the Warrants.

(signature page follows)

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

AKORN, INC.

By: _____
Bernard J. Pothast, Senior Vice
President, Chief Financial Officer,
Secretary and Treasurer

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The John N. Kapoor Trust dtd 9/20/89

By: _____
Name:
Title:

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EXHIBIT A

FORM OF WARRANT CERTIFICATE

THE SECURITIES EVIDENCED HEREBY ARE NOT TRANSFERABLE, EXCEPT IN ACCORDANCE WITH THE WARRANT AGREEMENT.

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES.

AKORN, INC.

[-----]

No. _____

WARRANTS TO PURCHASE COMMON STOCK

This certifies that [_____] or its registered assigns, is the owner of _____ Warrants, each of which represents the right to purchase from Akorn, Inc., a Louisiana corporation (the "Company"), at any time beginning _____, 200_ and prior to the Expiration Date (as defined in the Warrant Agreement referred to below), _____ shares of the common stock, no par value per share, of the Company (the "Common Stock") at a per share exercise price (the "Exercise Price") equal to \$_____ (subject to adjustment as provided in

the Warrant Agreement), upon surrender hereof at the Company, with the Subscription Form on the reverse hereof duly executed with simultaneous payment in full by wire transfer of immediately available funds or by certified or official bank or bank cashier's check payable to the order of the Company. At any time on or before the Expiration Date, any outstanding Warrants may be exercised on any Business Day (as defined in the Warrant Agreement); provided that the Holders of Warrants shall be able to exercise their Warrants only if the exercise of such Warrants is exempt from the registration requirements of the Securities Act of 1933, as amended, as reasonably determined by the Company, and such securities are qualified for sale or exempt from qualification under the applicable securities laws of the states or other jurisdictions in which such Holder resides.

This Warrant Certificate is issued under and in accordance with a Warrant Agreement dated as of October [], 2003 (the "Warrant Agreement"),

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between the Company and [], and is subject to the Articles of Incorporation of the Company and to the terms and provisions contained therein, to all of which terms and provisions the holder of this Warrant Certificate consents by acceptance hereof. The terms of the Warrant Agreement and the Registration Rights Agreement are hereby incorporated herein by reference and made a part hereof. Reference is hereby made to the Warrant Agreement for a full description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Company and the Holders of the Warrants. The summary of the terms of the Warrant Agreement and the Registration Rights Agreement contained in this Warrant Certificate is subject to and qualified in its entirety by express reference to the Warrant Agreement and the Registration Rights Agreement. To the extent permitted by applicable law, in the event of any inconsistency between the terms of this Warrant and the terms of the Warrant Agreement, the terms of the Warrant Agreement shall govern. All terms used in this Warrant Certificate that are defined in the Warrant Agreement and the Registration Rights Agreement shall have the meanings assigned to them in such agreements.

This Warrant Certificate shall be void and all rights evidenced hereby shall cease on the Expiration Date, unless sooner terminated by the liquidation, dissolution or winding-up of the Company or as otherwise provided in the Warrant Agreement upon the consolidation or merger of the Company with, or sale of the Company to, another Person or unless such date is extended as provided in the Warrant Agreement.

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The Warrant Agreement and the Warrants shall be governed by the laws of the State of New York. The Company and the Holders agree to submit to the jurisdiction of the courts of the State of New York in any action or proceeding arising out of or related to this Agreement or the Warrants.

AKORN, INC.

By: _____
Name:
Title:

Dated: _____, 200_

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FORM OF REVERSE OF WARRANT CERTIFICATE

SUBSCRIPTION FORM

(To be executed only upon exercise of Warrant)

To: Akorn, Inc.
2500 Millbrook Drive
Buffalo Grove, Illinois 60089
Telecopier No.: (847) 279-6191

Attention: Jerry Ellis

The undersigned irrevocably exercises _____ of the Warrants represented by this Warrant Certificate and herewith makes payment of \$ _____ (such payment being in cash or by certified or official bank or bank cashier's check payable to the order or at the direction of Akorn, Inc. or pursuant to a Cashless Exercise on the terms and conditions specified in this Warrant Certificate and in the Warrant Agreement referred to herein) and surrenders this Warrant Certificate and all right, title and interest therein to and directs that the common stock, no par value per share, of Akorn, Inc. (the "Common Stock") deliverable upon the exercise of such Warrants be registered or placed in the name and at the address specified below and delivered thereto.

Dated: _____

(Signature of Owner)

(Street Address)

(City) (State) (Zip Code)

FORM OF ASSIGNMENT

The undersigned registered Holder of this Warrant Certificate hereby sells, assigns, and transfers unto the Assignee(s) named below (including the undersigned with respect to any Warrants constituting a part of the Warrants evidenced by this Warrant Certificate not being assigned hereby) all of the right of the undersigned under this Warrant Certificate, with respect to the number of Warrants set forth below:

Name(s) of Assignee(s): _____
Address: _____
No. of Warrants: _____

Please insert social security or other identifying number of assignee(s):

and does hereby irrevocably constitute and appoint the Secretary of Akorn, Inc. the undersigned's attorney to make such transfer on the books of Akorn, Inc. maintained for the purposes, with full power of substitution in the premises.

In connection with any transfer of Warrants, the undersigned confirms that the transfer of the Warrants is exempt from registration under the Securities Act of 1933, as amended, and that the Assignee(s) is the Initial Holder or an Affiliate of the Initial Holder. The undersigned understands that the Company shall not be obligated to register the Warrants in the name of any Person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in Article VIII of the Warrant Agreement shall have been satisfied.

Dated: _____

(Signature of Owner)

(Street Address)

(City) (State) (Zip Code)

